INITIAL DISCUSSION FOR ISSUE PAPER

Proposed Revisions to Audit Manual Chapter 6

Vehicles, Vessels and Aircraft Dealers

Issue

Should revisions to Chapter 6, *Vehicles, Vessels and Aircraft Dealers*, be incorporated into the Sales and Use Tax Department's Audit Manual?

Background

The Audit Manual (AM) is the State Board of Equalization's (Board) guide for conducting sales and use tax audits. The thirteen chapters contained within the AM incorporate procedures and techniques that have evolved over the years and have been proven to be sound and practical. Field auditors are required to carefully study these procedures and techniques in order to ensure that audits are conducted, and reports are prepared, in a clear and uniform manner consistent with approved audit policies and procedures.

Audits involving vehicles, vessels and aircraft pose unique challenges to auditors. In addition to the audit procedures described in this chapter, auditors must be familiar with an assortment of industry-specific records and the documentation required by other regulatory agencies. Chapter 6, originally titled *Motor Vehicle Dealers*, has been expanded to also include vessel and aircraft dealers, since the audit procedures and application of law to these industries are very similar to those for motor vehicle dealers. Chapter 6, last revised in October 1985, provides comprehensive information on the standard industry and regulatory records, and establishes audit procedures for examining these records.

The proposed revision to AM Chapter 6 is scheduled for consideration by the Business Taxes Committee on July 25, 2000. This chapter was revised by staff and placed into a clearance process, allowing various staff and managers to review the chapter and recommend additional changes. Their suggestions and recommendations have been incorporated into the chapter. The following discussion provides an overview of the substantive revisions proposed to be incorporated into this chapter.

Discussion – Auditing New and Used Car Dealers

Vehicle manufacturers will enter into franchise agreements with new car dealers, allowing the dealer to sell the manufacturer's make of vehicles. The franchise agreement will dictate specific accounting and franchise reporting requirements that dealers must follow. Accounting journals and records found at new car dealerships are generally detailed and thorough, with most dealerships using very similar financial statement accounting programs. Used cars are sold by both new car dealers and dealers specializing only in used cars. Dealers specializing only in used cars are not franchised by the manufacturer or distributor and usually operate

independently. Records found in these businesses vary greatly, from complete accounting records with journals to car deal jackets and report of sales books with no summary journals.

Various regulatory and industry changes have occurred since Chapter 6 was last revised. Additions to Chapter 6 include references and examples of the type of records found at both new and used car dealerships and provide guidance on where to locate specific information necessary for the audit of those records. While many of these sections discussed below also apply to vessel and aircraft dealers, they are summarized here based on the organization of the chapter.

Underallowances

AM Section 0604.52 was expanded to provide guidance regarding underallowances on trade-ins of vehicles. Auditors are advised that a trade-in value below the amount shown in a valuation guide may be valid if it is the result of bonafide negotiations between the buyer and seller. However, auditors should be alert to instances where dealers undervalue the used car traded in and understate the selling price of the car sold by a similar amount, in order to reduce the measure of tax. This undervaluation of the trade-in is known in the industry as an "underallowance." Auditors are provided with guidance on how to audit for underallowances and what evidence may show an intent to evade tax.

Rebates and Incentives

AM Section 0604.62 was added to describe and distinguish between manufacturer's rebates and factory-to-dealer incentives. Manufacturer's rebates are allowances from the manufacturer directly to the consumer as an incentive to purchase the manufacturer's vehicle from the dealer. These rebates are included in the dealer's gross receipts in determining the amount subject to tax. Factory-to-dealer incentives are discounts from the manufacturer to the dealer, allowing the dealer to sell the vehicle to the customer at a lower price. The amounts of the discounts are not subject to tax.

Roll Backs

AM Section 0604.65 was expanded to provide information on the accounting methods and registration requirements involved in a "roll back." A "roll back" occurs when the sale of a vehicle is rescinded after possession was transferred to the buyer and a DMV Report of Sale was completed. The returned merchandise requirements of Revenue and Taxation Code sections 6011 and 6012 will be met if the dealer refunds the entire vehicle selling price and sales tax reimbursement to their customer. The dealer is not required to refund the license and registration fees to qualify for the returned merchandise deduction, since those fees are not part of the selling price of the vehicle for sales tax purposes.

Smog Certification and Inspection Fees

AM Sections 0604.83 was added to address the taxability of smog certification fees and inspection charges. The Department of Consumer Affairs is responsible for making or authorizing pollution emission inspections on certain types of motor vehicles. This is required

for both the initial registration and transfer of registration of a vehicle. Separately stated smog certification fees are not subject to tax; however, any smog inspection charges made in connection with the sale of a vehicle are subject to tax.

Warranties

AM Section 0605.17 was modified to address optional and mandatory warranties. A warranty is optional when the buyer is not required to purchase the warranty as a condition of sale, but may do so at his or her option. A warranty is mandatory when the buyer is required to purchase the warranty as a condition of sale. Tax applies to charges for a mandatory warranty, whether or not the charges are separately stated. When parts are subsequently furnished under a mandatory warranty, the dealer's charge to the manufacturer is a sale for resale and not subject to tax. Tax does not apply to any separately stated charge for an optional warranty. When parts are subsequently furnished under an optional warranty, the dealer's charge to the manufacturer or third party warrantor is a retail sale subject to tax.

Warranty Transfers and Deductibles

Sections 0605.18 and 0605.19 were added to address specific situations involving warranty transfers and deductibles. With the industry extending the length of coverage under mandatory warranties, transfers of these warranties are becoming more common. The transfer of a mandatory warranty is a transfer of the obligation of the manufacturer and not a sale of tangible personal property. As such, warranty transfer fees are not subject to tax. Deductibles can apply to both mandatory and optional warranties. Tax is due on the prorated deductible based on a ratio of the billed price for the parts to the total billed price (not including tax). Under mandatory warranties, the remaining portion of the billed parts is a sale for resale to the manufacturer with no additional tax due. Under optional warranties, the remaining portion of the billed parts is a taxable sale to the manufacturer or third party warrantor.

Demonstrators

AM Section 0606.20 was expanded to provide guidance regarding demonstrator vehicles assigned to the spouse of a corporate officer of a vehicle dealer. When these vehicles are regularly available for use, including demonstration and display, by the corporate officer, and assigned for a period not exceeding 12 months, the measure of tax is the fair rental value at $1/40^{th}$ of the purchase price per month.

Courtesy Vehicle Loans

AM Section 0606.25 was modified to address the growing industry practice of providing loaner vehicles to customers awaiting repairs to their vehicles. The loan of vehicles acquired by a dealer tax-paid has no additional tax liability. The loan of vehicles acquired by a dealer under resale certificates and provided to a customer without charge has potential tax liability depending on the nature of the original transaction with the customer. If the original transaction is a sale to the customer, and the loan of a vehicle is not included under the mandatory warranty, use tax is due measured by the fair rental value of the vehicle loaned. If the original transaction is a lease

and the lease is a continuing sale, or the loan of a vehicle is provided to the customer under a mandatory warranty, no additional tax is due. If the loaner vehicle is provided under an optional warranty, the dealer is the consumer of the loaned vehicle and tax is due on the fair rental value of the vehicle loaned (or rentals payable if the vehicles is rented from another source).

Loans of Automobiles to University Employees

AM Section 0606.42 was added to incorporate Revenue and Taxation Code (RTC) section 6202.7 regarding loans of vehicles to University of California or California State University employees. Beginning January 1, 1997, the dealer may report tax on vehicles loaned to University of California or California State University employees based on the fair rental value of the vehicle loaned when all of the following conditions are met:

1. The vehicle is for the employee's exclusive use.
2. The loan has been approved by the chancellor of the university or by the president of the state university.
3. It is demonstrated that the loan is not dependent upon the retailer receiving any future business from the university.

Prior to January 1997, a loan of a vehicle for use in other than educational purposes, for a period exceeding 30 days would have resulted in use tax being due on the dealer's cost of the vehicle.

Shop Supplies

AM Section 0606.70 was expanded to discuss purchases made by auto body and repair shops, and includes examples of items remaining on the vehicle or item being repaired, and items consumed in the repair process.

Interstate Deliveries

AM Section 0610.15 was expanded to include examples of when tax is due on vehicles California dealers deliver out-of-state and introduces Forms BOE-448 and BOE-447, which provide dealers with a means of documenting out-of-state deliveries and obtaining declarations on sales made to known California residents.

Foreign Purchasers

AM Section 0610.30 was expanded to include information regarding the exemption from tax of the sale of new noncommercial vehicles manufactured in the U.S. to a resident of a foreign country who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the U.S. Conditions that must be met include:

1. The purchaser is issued an in-transit permit by DMV pursuant to section 6700.1 of the Vehicle Code, and

2. Prior to or at the end of 30 consecutive days from the first day of operation under the in-transit permit, the motor vehicle is delivered or shipped to a point outside the U.S. by the retailer, by means of:
   (a) Facilities operated by the retailer, or
   (b) A carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property or arranging for its export.

Common Carriers

AM Section 0610.35 was expanded to include information regarding sales to common carriers, the documentation needed for the carrier to claim an exemption from tax for vehicles purchased, and to discuss the purchaser's ability to transport vehicles out-of-state as the common carrier under a bill of lading. The sale of the vehicle will be exempt if the vehicle is:

1. Shipped by the seller via the facilities of the purchasing carrier under a bill of lading to an out-of-state point, and
2. Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and
3. Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and
4. Used by the carrier in the conduct of its business as a common carrier.

Foreign Governments

AM Section 0610.50 was expanded to include information on exempt sales to foreign diplomatic personnel. The U.S. State Department, Office of Foreign Missions (OFM) issues Tax Exemption Cards to diplomats, their employees and family members who have been granted immunity from tax according to treaties or other diplomatic agreements with the United States. The OFM may also issue an identification letter directly to the retailer for foreign consular officers who do not hold a Tax Exemption Card.

Repair Parts

AM Section 0611.35 was expanded to discuss the applications of tax to trade-in allowance or "core" deposits on new, used and reconditioned parts. Tax applies to the total selling price of new and used parts before any allowance for trade-in and includes any "core" charge. No refund of tax is due for the "core" charge if the customer later returns the worn part associated with the purchase of the new or used part. When a reconditioned part is sold and the customer's worn part is taken as an exchange, tax applies to the exchange price. If the customer does not turn in his or her worn part at the time the reconditioned part is purchased, a "core" charge or deposit is usually assessed. When the customer returns the worn part for a refund of the deposit, any tax collected on the deposit should also be refunded. If the customer does not return the worn part, the core charge or deposit remains subject to tax.

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Vehicles, Vessels and Aircraft Dealers

Miscellaneous Fees

AM Sections 0611.42 and 0611.43 were added to discuss Tire Recycling, Oil Recycling, Hazardous Waste and overhead fees. Beginning January 1, 1997, a $.25 Tire Recycling Fee is imposed on every person purchasing a new tire. This fee is not subject to tax; however, if the retailer charges an amount in excess of $.25 per tire as a part of the sale of the new tire, the excess charge is subject to tax. Oil Recycling Fees are imposed on the first sale in California of lubricating oil and transmission or differential fluid. The dealer may pass along this fee to the customers as an overhead cost, as such, the charge is subject to tax. Hazardous Waste Fees are imposed on the handling, management and disposal of waste products such as transmission fluid, antifreeze, motor oil, and oil filters and are passed along to the customer. These fees are not subject to tax if they are directly related to the non-taxable servicing or repair of a customer's vehicle. Charges for Hazardous Waste Fees are generally taxable if made in conjunction with taxable work performed on the vehicle. Overhead charges not solely related to non-taxable labor or taxable part sales must be prorated in the same ratio as the itemized taxable charges for parts bears to the itemized non-taxable charges for labor.

The Lemon Law

AM Sections 0613.00 through 0613.35 were added to incorporate procedures for examining returned merchandise credits of vehicles returned under the California "Lemon Law." Section 1793.2 of the Civil Code provides that a manufacturer unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, will either replace the new motor vehicle or promptly make restitution to the buyer, at the buyer's option. To be considered a "Lemon Law Buyback," the vehicle needs to be retitled in the name of the manufacturer, the ownership certificate need to be inscribed with the notation "Lemon Law Buyback," and a decal affixed to the vehicle identifying it as a "Lemon Law Buyback." In addition, a disclosure statement needs to be signed by the subsequent customer buying the vehicle acknowledging that "This vehicle was repurchased by its manufacturer due to a defect in the vehicle pursuant to consumer warranty laws. The title to this vehicle has been permanently branded with the notation 'Lemon Law Buyback'."

Claims for refund for "Lemon Law Buybacks" can originate with both the dealer and the manufacturer. Procedures to determine the new car dealer's participation in the vehicle replacement, along with computing the amount of the refund and the tax implications of upgrading or downgrading vehicles are summarized. Both district and auditor responsibilities are outlined to ensure duplicate credits are not taken.

Audit Procedures

AM Section 0614.37 was added to provide recommended audit procedures for audits of used car dealers. Exhibit 5 was revised to update the sample audit program for new car dealers.

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DMV Information

AM Section 0614.45 was added to outline procedures to obtain DMV information from the Consumer Use Tax Section (CUTS). CUTS has access to on-line DMV vehicle/undocumented vessel registration and use tax payment information. Additional information such as Registration Receipt, Certificate of Title (pink slip), Bill of Sale, Statement of Fact, Power of Attorney, and other documents provided to DMV may also be available.

Leases other than Mobile Transportation Equipment

AM Section 0617.15 was expanded to address situations where the lessee is not subject to use tax (i.e., insurance companies, the United States or its instrumentalities). In these instances, the lessor becomes liable for the sales tax measured by rentals payable.

Leases of Mobile Transportation Equipment

AM Section 0617.25 was expanded to provide information that the lessor of mobile transportation equipment is the consumer of the equipment and tax is due either on the sale of the equipment to the lessor or its use in this state. As the consumer, tax is generally due on cost. However, the lessor, at his option, may timely elect to report his tax liability measured by the fair rental value.

Drive-Away Charges

AM Section 0617.30 was expanded to include a description of the "up-front" or "drive-away" charges generally associated with leases of vehicles. These include capitalized cost reductions, document preparation charges, bank fees, acquisition fees, and booking fees. Charges found at the close of the lease include renegotiation fees, assumption fees, deferral fees, and excessive wear and use charges. The dealer is responsible for collecting and reporting tax on all taxable costs for which payment was received from the lessee, as the dealer is initially the owner of the leased vehicle and appears on the lease contract as the lessor. The party to whom the contract is assigned is responsible for collecting and reporting tax on all subsequent lease payments after the lease is assigned.

Local Tax Allocation on Leases

AM Section 0618.05 was added to incorporate changes in the manner local tax is allocated on the leases of motor vehicles. Two recent changes in the statute, January 1, 1996 and January 1, 1999 affect the method of local tax allocation. Motor vehicle leases are classified as either short term (after January 1, 1996, four months or less) or long term. Other factors include whether the lessor is the new car dealer, a California leasing company or an out-of-state lessor. A table has been included to assist in determining where the local tax should be allocated.

Transactions (Sales) and Use Tax

AM Section 0625.00 was added to address dealers selling vehicles, undocumented vessels and aircraft licensed or registered in any district imposing the tax. The dealer is considered engaged in business in that district and is required to collect the use tax and pay it to the state. If a dealer

is located in a special taxing district and sells or leases a vehicle that will be registered in an area where there is no special district tax, the dealer is required to obtain a signed declaration from the purchaser indicating where the vehicles will be registered.

Terminology
AM Section 0640.00 was added to provide definitions of the most common terms used in the automobile industry.

Discussion – Auditing Vessel and Aircraft Dealers

Vessel Dealers
AM Sections 0630.00 through 0630.40 were added to provide information on vessel dealers and procedures generally applicable to audits of vessel dealers. DMV forms provided to the Board are discussed, along with verification procedures to examine these forms. Exempt sales of vessels for commercial deep-sea fishing and sales with out-of-state deliveries are discussed. Various situations arising from sales of vessels through a yacht or shipbroker are also discussed.

Aircraft Dealers
AM Sections 0635.00 through 0635.35 were added to provide information on aircraft dealers and procedures generally applicable to audits of aircraft dealers. There is no state agency that licenses aircraft dealers to sell aircrafts in California. Information is obtained from the Federal Aviation Administration's master file registration showing changes in an aircraft registered with a California address or transferred from an out-of-state address to a California address. Discussions of audit procedures, co-ownership and use in California are also provided.

Summary

Issuance of appropriate guidelines and auditing procedures are an essential part of the effective administration of California's self-assessed sales and use tax program. Maintaining an accurate, complete and up-to-date audit manual is necessary to accomplish this goal. The proposed changes to Chapter 6 provide greater guidance, up-to-date terminology, and recommend appropriate auditing procedures that conform to current practices. Incorporation of these proposed revisions into the AM will further the Board's commitment to maintaining an efficient and effective tax program implemented by knowledgeable and qualified staff, as well as providing guidance and information to the public.

Prepared by the Program Planning Division, Sales and Use Tax Department
Current as of 03/27/00

Exhibit 1

AUDIT MANUAL

Chapter 6

~~*Motor*~~ *Vehicle, Vessel, and Aircraft Dealers*

Sales and Use Tax

~~***Department of Business Taxes***~~

Sales and Use Tax Department

STATE BOARD
OF EQUALIZATION

March 2000

CHAPTER 6

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CHAPTER 6

~~MOTOR~~ VEHICLE, VESSEL, AND AIRCRAFT DEALERS

0600.00

INTRODUCTION- VEHICLE DEALERS 0601.00

GENERAL 0601.05

A motor vehicle is ~~may be~~ defined as a device which is self-propelled, such as an automobile or ~~a~~ truck, and used on a highway to move persons or property. The material included in this chapter~~herein, also however,~~ applies to audits of the records of any seller whose transactions are similar to those of a motor vehicle dealer. This is particularly true of dealers ~~in~~of house trailers, motorcycles, recreational vehicles, jet skis, snowmobiles and tractors.

CLASSES OF DEALERS 0601.10

Motor vehicle dealers may be divided into the following classes:

(a)	Distributors	(e)	Used Car Dealers
(b)	Assembly Plants	(f)	Wholesale Only
(c)	Factory Branches	(g)	Automobile Brokers
(d)	New Car Dealers	(h)	Leasing Companies

Distributors occasionally are also new car dealers, and new car dealers usually sell used cars.

DISTRIBUTORS 0601.15

There are two types of distributors with which auditors usually come in contact:

(a) Several automobile manufacturers maintain zone or regional offices for each of their divisions within California. The functions of these offices include distribution of new automobiles to franchised dealers.

(b) Separate entities also are granted exclusive rights of distribution by the manufacturer. This type of distributor sometimes serves as a new car dealer.

Also, there are other types of distributorships or variations to those described above.

RECORDS OF DISTRIBUTORS 0601.20

It is usually necessary for a distributor to maintain records of a type which are adequate for sales tax auditing purposes, since factory requirements and relationships with dealers usually require such records.

ASSEMBLY PLANTS 0601.205

Certain ~~of the~~ larger manufacturers have established assembly plants at points within California in order to better serve their distributors. Such assembly plants seldom function as distributors, but rather take the place of the factory as a source of supply of certain models. Assemblers are not licensed by the Department of Motor Vehicles (DMV), and tax is reported by the dealer who reports the sale to ~~the~~ DMV~~epartment of Motor Vehicles~~. (See Section 0605.30)

FACTORY BRANCHES 0601.3025

Certain manufacturing divisions have factory branches which operate as new car dealers securing their new automobiles through the zone office or function both as new car dealers and distributors.

~~RECORDS OF DISTRIBUTORS 0601.30~~

~~It is usually necessary for a distributor to maintain records of a type which are adequate for sales tax auditing purposes, since factory requirements and relationships with dealers are usually sufficiently exacting to require such records.~~

DEALERS–NEW CARS 0601.35

The records which a new car dealer keeps are very often specified, and sometimes supplied, by the distributor or manufacturer. Several adequate systems for dealer usage have been evolved by the manufacturers and are in wide use.

DEALERS–USED CARS 0601.40

The books and records of dealers handling used cars exclusively are not usually as extensive or detailed as those of new car dealers or distributors since, unlike the new car dealers~~foregoing~~, they are under no compulsion to maintain a certain type of records.

DEALERS–WHOLESALE ONLY 0601.42

~~A new class of~~ "Wholesale Only" dealers ~~license was authorized as of January 1, 1982. Such licensees~~ are limited to use of DMV ~~w~~Wholesale Report of Sale books only and are not authorized to sell vehicles to other than licensed dealers or to use ~~r~~Retail Report of Sale books.

BROKERS 0601.45

~~An a~~Automobile brokers ~~is~~are ~~a~~ dealers who, for a fee or other consideration, provide~~s~~ the service of arranging, negotiating, or assisting the purchase of ~~a~~ new or used motor vehicles, not owned by the brokers~~may be defined as one who procures new, and occasionally used, automobiles from regular franchised new car dealers and licensed used car dealers~~. ~~Their~~ ~~o~~Operations vary depending on the~~ir~~ relationship with their clients. They may act as an agent for either the buyer or the seller, or they may act as an independent agent.

Effective January 1, 1995, the Vehicle Code was amended so that persons acting as brokers are prohibited from buying and selling new automobiles for their own account. Under the Vehicle Code, it is now a violation of a dealer's license to advertise for sale or sell a motor vehicle for which the dealer does not hold a franchise. The intent of the new law is for new motor vehicles to be sold to consumers by only those dealers who hold a franchise for the vehicle in question.

A dealer registered with DMV as an autobroker may advertise its services of arranging or negotiating the purchase of a new car from a franchised new car dealer.

Examples of the application of tax for broker transactions are as follows:

- ~~*Where*~~*If the car dealer bills the broker's client for the automobile, with the broker acting as agent of the buyer, the tax will apply to the amount billed by the dealer. The fee charged by the broker is not subject to tax.*
- ~~*Where*~~*If the car dealer bills the customer for the automobile, with the broker acting as agent of the selling dealer, the tax will apply to the amount billed by the dealer. No deduction can be taken by the dealer for commissions paid to the broker.*

Some brokers have sellers' permits and/or used car dealers' licenses since they accept trade-ins, and may maintain a used car lot. Auditors should be aware that the Vehicle Code requires autobrokers to complete and maintain an autobroker log. The log contains the VIN, date of brokering agreement, name of consumer, and the selling dealer's name and dealer number. The log is kept for three years and is the property of DMV, to be made available for inspection at any time.

There are no guide-lines that~~which~~ will enable the auditor to determine in which capacity the broker is acting in every situation. Each transaction must stand on its own merits. Generally speaking, however, the broker will receive a commission from his or her principal and may or may not be empowered to act for the principal in signing car orders and other documents pertaining to the transaction.

BROKERS ACTING AS INDEPENDENT RETAILERS 0601.50

(a) ~~Where~~If the broker agrees in advance to secure an automobile for a client at a specified price, the broker is the retailer. It is immaterial that the car dealer bills the broker or the broker's client.

(b) ~~Where~~If the car dealer bills the broker for the automobile and the broker in turn bills the client, the broker is the retailer.

Brokers who are licensed with ~~the Department of Motor Vehicles~~DMV, and who utilize a "Dealer's Report of Sale" must hold a seller's permit and pay sales tax on sales of vehicles~~,~~ that~~which~~ they arrange between private parties~~,~~ and ~~as to~~ which they file a "Dealer's Report of Sale." Since the new law (see Section 0601.45) does not prevent a franchised dealer from selling an automobile to a dealer who is an autobroker, such purchase could be made under a resale certificate with the vehicle registered in the name of the dealer-broker. A violation of the dealer's license alone would not be cause to disallow a resale. A sale by a franchised new car dealer to another dealer will be allowed provided the purchasing dealer holds a valid seller's permit and issues a resale certificate. New car dealers should be encouraged to request a specific resale certificate for each transaction.

When a dealer-broker pays sales tax reimbursement to the franchised dealer, a tax-paid purchase resold deduction will be allowed provided the vehicle is in fact resold without use. The mere fact of registration in the name of the purchasing dealer does not make this transaction a retail sale.

When these types of transactions are encountered in audits of franchised dealers, BOE~~T~~-1164 should be prepared for questionable transactions, e.g., sale of a Rolls Royce to a used car dealer which is registered at an address other than the purchasing dealer's business address.

~~Sales to the broker by a "dealer" of vehicles which will be subsequently resold by the broker are sales for resale and appropriate documentation should be retained by the dealer to support their exempt status.~~

Brokers who intend to bill their clients for the vehicle should advise the dealer of ~~from whom they purchase it of~~ the amount of sales tax to be charged. If the amount of tax charged by the dealer is sufficient to cover the broker's selling price to his or her customer, there is no additional liability to the broker. However, leads on the dealer charging the sales tax should be prepared, as it sometimes occurs that the dealer's invoice does not reflect this charge. An example follows:

	Invoice in Broker's File From Dealer	Invoice in Dealer's File to Broker
Automobile	$12,000	$12,152~~13~~
Sales Tax on $14,000 (@ 8.25%)	1,155~~840~~	*1,003~~727~~
	$13,155~~$12,840~~	$13,155~~$12,840~~

*($12,152)(.0825)

The tax due from the dealer in this case is $1,155~~840~~. When auditing dealers who sell to brokers, auditors should check for evidence of tax on an amount greater than the selling price reflected in the dealer's records.

DEALER'S STANDARD ACCOUNTING SYSTEM 0601.55

~~DEALER'S RECORDS PREPARED BY DATA PROCESSING SERVICE BUREAUS 0601.52~~

General~~ENERAL~~

~~There are several electronic data processing service bureaus specializing in preparing books and records for new car dealers. In the typical system, dealership personnel prepare the invoices and other source documents. The information from the source documents is then transcribed into a machine readable media such as punched paper tape which is sent periodically to the service bureau. The service bureau uses its computer to sort and summarize the data and electronically print the dealer's journals, ledgers, and other reports.~~Most accounting records are produced in-house using software purchased from vendors such as ADP, Universal Computer Consulting, Reynolds & Reynolds, etc. To make efficient use of the accounting system, most dealers organize their accounting tasks into daily, weekly, and monthly procedures.

Daily procedures include entering customer names and new vehicle units, printing a summary cash deposit report, and verifying totals after posting. On a weekly basis, selected schedules are printed such as car inventories and finance contracts, and a review is made for posting errors. Past due accounts receivable reports are printed. Monthly procedures involve closing accounts receivable, paying open items in accounts payable and generating an accounts payable report. Month-to-date postings are made to the journals, a summary general ledger is prepared, and income statement, balance sheet and month to date account balances are printed. Financial statements and monthly status reports are prepared. Status reports include profit and loss information for each department, unit analysis information, budget analysis, sales information, and accounts receivable history. A current inventory list is also printed. Finally, the accounting month is closed and a new month is set up.

When the auditor encounters difficulty in tracing summary figures to source documents or in isolating certain types of transactions for examination, the dealer's assistance should be solicited. Dealer personnel often trace or isolate data in the day-to-day operation of the business and may have developed timesaving techniques which can expedite the auditor's verification.~~The auditor may find the electronically produced records more difficult to audit than manually prepared records because:~~

~~(a) Numeric codes are used extensively in place of alphabetic customer names and account titles .~~

~~(b) The general ledger is prepared on a monthly basis rather than an annual basis.~~

~~(c) Entries in journals are printed vertically rather than in the traditional horizontal spread-sheet format.~~

~~(d) The auditor cannot readily determine the adequacy or accuracy of the electronic system. Thus, his tests may be more extensive than necessary.~~

~~THE REYNOLDS & REYNOLDS COMPANY SYSTEM~~

~~This system is used extensively by dealers in domestic new cars. Audit time can be saved by understanding the procedures used and records available in this and similar systems.~~

~~SOURCE DOCUMENTS~~

~~Invoice forms, repair order forms, etc., are furnished to the dealer by Reynolds & Reynolds Company. They are the typical dealership forms and contain an account block area for account posting information.~~

~~ENCODING FROM SOURCE DOCUMENTS~~

~~Using a special adding machine provided by Reynolds & Reynolds Company, car dealer personnel transcribe account numbers and monetary amounts from source documents onto an optical font paper tape. The special characters on the tape can be interpreted electronically by an optical scanner at the Reynolds & Reynolds data center. The adding machine device incorporates several control features to prevent out of balance entries and other errors.~~

~~PROCESSING OF DATA~~

~~The optical font tapes are edited at the data center and converted to magnetic tape. Standardized ("canned") computer programs are used to produce the monthly printed journals, ledgers, and reports from the data on magnetic tape. The data center retains the optical tapes received, but send all copies of journals, ledgers and reports to the dealer. The dealer retains a copy of each tape, also. The tapes are in numerical sequence, y months, and the tape number is identified in the journals.~~

J<u>ournals</u>~~OURNALS~~

A~~ll~~ typical dealership<u>'s</u> journals are <u>numbered with standard codes such as new car sales may be source 10 or journal 10, used car sales may be source 20 or journal 20, etc</u>~~provided~~. The detail of each transaction is listed vertically in account number sequence within document number sequence. The last page of each journal summarizes the entries to each account. These summary figures can be traced directly into the general ledger. Control numbers, which can be car deal numbers, customer numbers, stock numbers, etc., depending on the journal, are also listed.~~ Only numeric codes are printed; there are no customer or vendor names printed in the journals.~~

G<u>eneral Ledger</u>~~ENERAL LEDGER~~

A separate general ledger is printed for each month of the year. In addition, an annual general ledger is printed at the end of the accounting year, listing all entries during the year. The ledger is of typical format and entries are readily traceable to the journals.

<u>Stock Book</u>

<u>This journal typically lists each vehicle delivered to the dealership in chronological order. Depending on the person maintaining this book, it could be a more complete listing of customer name, date vehicle received and sold, VIN#, etc. A stock book is normally not kept with the journals and general ledgers and may not be readily available in the dealership's accounting department. Review of this book can help in identifying sales not recorded in the sales journal, courtesy deliveries, and vehicles which have remained in inventory for long periods (house cars and demonstrators).</u>

~~MANAGEMENT SCHEDULES~~

~~Certain reports called "Management Schedules" are provided to the dealership by Reynolds & Reynolds. They are bound separately from the journals and general ledger and may not be readily available in the dealership's accounting department. Audits of this system have been made without knowledge of the existence of the management schedules. This has resulted in some wasted audit time and effort. Unlike the journals, some schedules do contain vendee and vendor names. The significant management schedules are:~~

~~(a) Car Deals - This schedule lists all car "deals" begun or completed during the month and includes the customers' names. Each sale in the new and used car journals can be traced to the "car deals" schedule in order to match the sale to the purchaser's name.~~

~~(b) New and Used Car Inventories - These schedules list all cars in inventory during the month including cars added or deleted due to purchases and sales. The cars appear in stock number sequence. These schedules can be useful in identifying sales net recorded in the sales journals or vehicles which have remained in inventory for long periods (house cars and demonstrators).~~

~~(c) Sublet Repair Inventory - This schedule is a summary of charges and credits to the sublet account. Sublet repairs which were billed to customers can be isolated from internal sublet repairs. This schedule may assist in the test of sublet repair material recorded as exempt labor.~~

~~(d) Accounts Payable - This schedule is an inventory of accounts payable and a record of the debits and credits to the account during the month. It contains vendors' names and therefore may be of use in con junction with the examination of the purchase journal.~~

~~(e) Invalid Accounts - This schedule identifies the source of entries made to accounts which are invalid (not found in the dealer's chart of accounts). The invalid entries are held in suspense until the dealer makes a correction through the following month's general journal. It should be noted, however, that entries made to incorrect but valid accounts will be processed normally and will not appear in the invalid accounts schedule.~~

~~AUDIT PROCEDURE~~

~~An initial step in an audit where the Reynolds & Reynolds system is employed should be to review the management schedules as potential sources of information. The circumstances will determine their use in the audit. For example, if no numeric file of car sales invoices is maintained, it may be necessary to identify customer names by using the "Car Deals" schedule in conjunction with the car sales journals. Another use of the management schedules might be to examine the car inventory schedules to identify company cars and demonstrators where the dealer has failed to set up a separate general ledger account for them.~~

~~Electronic data processing service bureaus provide a basic package of accounting records to the dealer. These basic records are produced using standardized or "canned" programs. Thus, the basic package of records produced for one dealer will be the same as those prepared by the service bureau for another dealer. However, the service bureau may also offer optional services at extra cost. During the initial survey of a dealer's system, the auditor should attempt to determine if useful records are being provided as optional services.~~

(Cont.) 0601.55

~~When the auditor encounters difficulty in tracing summary figures to source documents or in isolating certain types of transactions for examination, the dealer's assistance should be solicited. Dealer personnel often trace or isolate data in the day-to-day operation of the business and may have developed timesaving techniques which can expedite the auditor's verification.~~

SALES RECORDS 0602.00

GENERAL 0602.05

The sales records of motor vehicle dealers who maintain adequate accounting systems are usually similar to those described in Sections 0602.10 to 0602.30.

SALES DOCUMENTS 0602.10

There are three types of billings used by most automobile dealers ~~namely~~:

(a) Motor Vehicle Contract and Security Agreement~~Car invoices and/or orders~~.

(b) Parts and accessory counter sales invoices.

(c) Repair orders.

MOTOR VEHICLE CONTRACT AND SECURITY AGREEMENT~~CAR INVOICES AND CAR ORDERS~~ 0602.15

Most dealers use a motor vehicle contract and security agreement~~car order~~ as the basic ~~document of~~ sales document~~, and prepare the sales invoice from the car order. Those dealers who do not furnish an invoice to the customer provide instead a copy of the car order~~. Vehicle contracts usually~~Car invoices normally are renumbered and are prepared in triplicate~~.~~ with o~~O~~ne copy ~~is~~ filed in the deal jacket~~customer deal folder; one copy is filed in a binder in numerical sequence~~ and one copy given~~is~~ to~~for~~ the customer~~. if it is the dealer's practice to furnish an invoice.~~ Sales information from the vehicle contract is usually transcribed to the deal jacket, which forms the basis of postings to the car journal. Some dealers may prepare a vehicle sales invoice to post the information from the contract to the journal.

SALES JOURNALS 0602.20

The journals normally used by new car dealers are:

(a) New Car Retail.

(b) New Car Fleet.

(c) New Car Commercial.

(d) Used Car.

(e) Parts, Accessory, and Service.

(f) Internal.

FINANCIAL STATEMENTS 0602.25

Most new car dealers will have adequate records, particularly where accounting systems prescribed by major automobile manufacturers are used.

Included in these records are monthly financial statements prepared on forms furnished by the manufacturer or distributor which will reflect the dealer's operations in considerable detail. They will include all the sales posted to the general ledger sales accounts from the various sales journals, as described in Section 0602.20 as well as those sales posted from the general or standard journals.

DEALER'S SALES TAX WORKING PAPERS 0602.30

The majority of dealers prepare and retain working papers in support of each sales tax return. The format and amount of detail vary. In all audits, it is necessary that the auditor examine this data thoroughly to establish method of reporting, sources of amounts, and consistency of reporting procedures.

AUDIT PROCEDURE IN GENERAL 0603.00

INTRODUCTION 0603.05

In general, an audit of a motor vehicle dealer follows the same pattern as an audit of any other seller. It should be noted that new car dealer's operations are departmentalized, with records which reflect specialization.

INTERVIEW TAXPAYER'S REPRESENTATIVE 0603.07

The auditor should interview the business manager or taxpayer's representative prior to beginning the audit work. Inquire about method of sales tax worksheet preparation and identify the source of the figures (financial statement, general ledger, journals, vehicle contracts, etc.), and whether the worksheets are reliable. Determine the "Demo Policy" with respect to employees, non-employees and family members. Determine who the demos were assigned to and the source of this information. Establish the method of claiming exempt sales and ask how courtesy deliveries are recorded.

USE OF FINANCIAL STATEMENTS 0603.10

Sales per the financial statements (Section 0602.25) should be traced to the sales tax working papers. An acceptable practice is to transcribe annual totals as the base amount for comparison with reported sales for the particular year. Some car dealers may report only taxable sales. Therefore, reconciliation between recorded sales per financial statement and reported sales per the sales tax return may not be meaningful. In this case, ~~Only under unusual circumstances~~ the auditor would ~~an auditor~~ disregard financial statement totals and transcribe sales from the general ledger.

The auditor should bear in mind that sales per financial statements do not necessarily include all sales, nor do they reflect the proper amounts of all allowable deductions.

It should be noted that total sales per financial statements ordinarily are net of discounts and overallowances. (See Sections 0604.55 and 0604.60.) Also, courtesy deliveries will not be shown since the delivering dealer is not making the actual sale, although responsible for collecting the tax.

USE OF DEALER'S SALES TAX WORKING PAPERS 0603.15

The dealer's supporting schedules can be an important factor in determining audit procedures and the extent of examination and tests. It is recommended that the first step in the audit be a detailed examination of the dealer's working papers and returns for the audit period. These schedules can provide the base amounts of audited sales and deductions and save valuable audit time. Verification of recorded detail may be made directly to the dealer's working papers avoiding unnecessary scheduling. Some dealers attach copies of the sales tax accrual account which could expedite the reconciliation of the tax accrual. Exempt transactions may be listed in detail making it easier for the auditor to verify them. Demos and courtesy delivery transactions may be listed and could form the basis of their examination.

EXAMINATION OF GENERAL LEDGER 0603.20

General ledger accounts must be examined to determine postings of sales to proper accounts, and also the posting of all accounts in conformance with acceptable accounting procedures. Analysis of the ledger accounts together with the comprehensive examination of sales tax working papers will help the auditor formulate an audit program.

SALES TAX ACCRUAL ACCOUNT 0603.25

An analysis of the sales tax accrual account should be made as it may disclose leads to unreported sales or to excessive deductions. A sales tax accrual account showing credits only slightly in excess of taxes paid, or payments in excess of collections, does not necessarily indicate errors in reporting.

In reconciling the accrual account, the auditor should adjust for tax on the measure of bad debts claimed, refunds of tax to customers who were charged in error, and for any other instances where taxpayer did not debit accrual account where such a charge was in order. Auditors should also adjust for such items as reported self-consumed merchandise, rental receipts on demonstrators and any other sales reported on which taxpayer did not accrue tax. If, after making the above adjustments, an excess debit or credit of tax still exists, tests should be made of the various journals comparing the accrual with recorded taxable sales from the respective journal. Excess tax accrued may indicate unreported courtesy deliveries or tax collected on cap reduction and down payment on leased vehicles. Auditors should place emphasis on examining adjustments made to the accrual account and trace to journal entries.

~~For periods prior to January 1, 1979, an excess of tax from the car sales journals may indicate excess tax reimbursement resulting from tax charges to the nearest or next higher whole dollar, unallowable discounts, overallowances, or netted trade-ins.~~

The measure of sales tax accruals from cash receipts~~,~~ and general journal entries should be traced to taxable measure reported.

~~For periods on and after January 1, 1979, if a retailer adds to the sales price of tangible personal property sold at retail an amount represented to the customer as soles tax reimbursement in excess of the amount computed in accordance with Civil Code Section 1656.1 and does not return the amount to the customer, the amount will be regarded as part of the price of the property sold. The retailer will be regarded as having sold the property for a price which includes sales tax reimbursement. See Regulation 1700 (a)(4).~~

When sales tax reimbursement is computed on an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the dealer, the amount paid is excess tax reimbursement as defined in Regulation 1700(b). When the auditor ascertains that excess tax reimbursement was collected, the dealer will be afforded an opportunity to refund the excess collections to the customer. In event of failure or refusal of the person to make such refunds, the auditor will include the measure of excess tax reimbursement in the audit.

REGULAR SALES OF NEW AND USED CARS 0604.00

GENERAL 0604.05

As indicated (Section 0603.10), certain adjustments to recorded sales figures usually will be required in establishing audited total sales. Sections 0604.10 to 0604.25 provide information relative to ~~Department of Motor Vehicles~~DMV requirements and use of DMV Reports of Sale. The remaining sections cover many items encountered most frequently and provide background information. See Section 0613.00 for information regarding the Lemon Law.

VEHICLE CODE 0604.10

Three of the provisions of the Vehicle Code of the State of California which are important from the standpoint of the auditor are:

(a) Requirements for the registration of vehicles.

(b) Conditions under which dealers must report sales to ~~the Department of Motor Vehicles~~DMV.

(c) Conditions under which lessor-retailers are required to pay sales tax on retail sales of vehicles.

Section 4000 of the Vehicle Code defines vehicles subject to registration with ~~the Department of Motor Vehicles~~DMV and includes: " . . . motor vehicle, trailer, semi-trailer, pole or pipe dolly, logging dolly, or auxiliary dolly. . ." This includes all types of automobiles, buses, motor~~–~~cycles, trucks, and trailers. Section 5901 of the Vehicle Code requires that dealers or lessor-retailers in both new and used cars report all retail sales to ~~the Department of Motor Vehicles~~DMV. It reads as follows:

> "Every dealer or lessor-retailer, upon transferring by sale, lease or otherwise any vehicle, whether new or used, of a type subject to registration under this code, shall, not later than the end of the fifth calendar day thereafter, not counting the day of sale, give written notice of the transfer to the department at its headquarters upon an appropriate form provided by it."

~~Effective January 1, 1977,~~Section 11615.5 of the Vehicle Code requires a licensed lessor-retailer to pay sales tax with respect to the retail sale of a motor vehicle, except a sale to the lessee of the vehicle, if the lessor-retailer files a report of sale with ~~the Department of Motor Vehicles~~DMV.

DEALER'S REPORTS OF SALE 0604.15

The Vehicle Code requires that dealers apply for a dealer's certificate of registration and report all sales on appropriate forms, one copy of which is retained by the dealer, and one copy filed with~~in the headquarters office of the Department of Motor Vehicles~~DMV headquarters~~at~~ in Sacramento. These reports contain such information as the dealer's name, address, and registration certificate number, the purchaser's name and address, the make of vehicle sold, the date of sale, and engine number/serial number, body type and model name and number. ~~The Department's~~DMV's copies of these reports of sale are retained for four years~~the current year and two prior years~~.

In the case of new vehicles, the report form used is "Application For Registration Of New Vehicle"~~Dealer's Report of Sale and Application for Registration"~~ (Reg. 397). The New Vehicle Report of Sale is used for reporting the sale of a new vehicle that the dealership is franchised to sell. Since this form of report also serves as the application for registration, it is virtually impossible for a purchaser to secure registration of a new automobile unless the purchaser~~has~~ signed the dealer's report of sale and ~~unless~~ the dealer has sent that form to ~~the Department of Motor Vehicles~~DMV. For this reason, there should be a report of sale on file ~~in the~~at ~~Department of Motor Vehicles~~DMV for every new car sold. However, some new car dealers do not comply with the Vehicle Code in that they do not submit a report of sale on a unit sold to an out-of-state resident when the vehicle is not to be registered in California.

The New Vehicle Report of Sale forms are made up of four parts. The upper portion of the original is the application copy submitted to DMV for registration of the vehicle. The application copy is to be submitted to DMV with all forms and fees within 20 days of the date of sale. The upper part of the duplicate portion is the dealer's "book copy" and must be retained in the book. The stub of the original is the temporary operating copy which is displayed in the vehicle. The bottom portion of the original is the Purchaser's Temporary Identification that is displayed in the vehicle. The bottom portion of the duplicate is the Dealer's Notice which is to be mailed to DMV no later than the 5th calendar day following the date of sale. The dealer must retain the "book copy" for four years, corresponding with DMV's retention period.

If the report of sale is to be voided due to an error, all parts must be marked "VOID." A report of sale is required when a California dealer makes a courtesy delivery (see Sections 0605.35, 0605.40 & 0605.45). "Courtesy Delivery" must be marked on both the upper and lower portions of the report of sale (original and book copy). Examining the report of sale book can identify the courtesy deliveries for the audit period.

When a vehicle is sold for registration out-of-state, a report of sale is required and the original is marked "For Registration Out of State." DMV will not allow the vehicle moved on a highway without the purchaser securing a One-Trip permit (see Section 0610.25) to move the vehicle out of California, or obtaining registration in his or her home state prior to moving the vehicle on the highway. The dealer is responsible for the completion and submission of a Statement of Facts explaining how the vehicle was moved. If a copy of this is filed in the deal jacket, this could be one source for determining the taxability of the transaction.

When dealers sell new vehicles to dealers of the same franchise, they are not required to report the transaction on the Wholesale Report of Sale, the selling dealer submits a Notice of Release of Liability to DMV.

USED CAR SALES 0604.25

In the case of used vehicles, the report form used is "Report Of Sale - Used Vehicle~~Dealer's Report of Sale and Transfer~~"(Reg 51). The Used Vehicle Report of Sale is used for reporting retail sales of used vehicles. This form is not to be used to report wholesale transactions. While the Vehicle Code requires the dealer to file such a report for each sale, it is possible to transfer registration into the name of the purchaser without submission of the report. Occasionally, dealers have sought to conceal their connection with the sale of used cars by failing to file a "Report Of Sale - Used Vehicle"~~"Dealer's Report of Sale and Transfer"~~ and by not inserting their names as required on the reverse side of the Certificate of Ownership (pink slip). Such pink slip transfers indicate passage of title directly from one owner to another. The auditor cannot, therefore, be sure that the records of ~~the Department of Motor Vehicles~~DMV disclose all sales of used cars by dealers.

The Used Vehicle Report of Sales also consists of four parts: Application Copy (upper portion of original), Book Copy (top of the duplicate), Dealer's Notice (bottom of the original), and Purchaser's Temporary Operating Copy (bottom portion of the duplicate). All parts of the report of sale have the same accountable number. The book copy is to be retained by the dealer for a four year period.

A Wholesale Report of Sale form is used to report sales of used vehicles from dealer to dealer. This includes wholesale transactions to out-of-state or out-of-country dealers, scrap metal processors, and dismantlers. All parts of the report of sale have the same accountable number.

Wholesale motor vehicle auctions prepare a Vehicle Auction Wholesale Report of Sale that may be computer generated by the dealer or ordered through DMV.

DEALER'S REPORT OF SALE AS EVIDENCE 0604.30

The filing of a Dealer's Report of Sale will be presumptive evidence that the dealer who filed the report made the sale. However, there may be cases where this presumption can be overcome as, for example:

(a) Where a dealer improperly acquires the report book of another dealer and fills in the name of the dealer to whom the book was issued.

(b) Where a dealer sells a car to another dealer and the registration is in the name of the purchasing dealer.

(c) Where a dealer rents a vehicle to a salesman and reports the vehicle as sold in order that it may be registered in the salesman's name. (See Section (b) & (c) of Regulation 1669, Demo. & Display.)

(d) Where a dealer registers a vehicle in the name of the manufacturer. (Section 0605.30)

CUSTOMER DEMANDS CERTIFICATE OF TITLE 0604.32

When a purchaser demands title for a vehicle which has been purchased free of any liens or encumbrances, the dealer is required to complete a used vehicle report of sale in the usual manner. The used vehicle report of sale number is entered on the back of the Certificate of Title and title is delivered to the purchaser including a smog certification, if applicable.

In such "demand title" transactions, the dealer is required to obtain a Statement of Facts from the purchaser confirming his or her demand for and receipt of title indicating the reason for the demand. Most often the reasons given are "will be registered out-of-state" or "wish to personally take care of transfer." In either case, delivery of vehicle to a consumer in California will generally make this a taxable transaction for the car dealer. The dealer is still considered the retailer of the vehicle and responsible for the sales tax, regardless of a "demand title" clause.

USE OF DEALER'S REPORTS OF SALE IN AUDITING GROSS RECEIPTS 0604.35

It is apparent from the preceding sections that an examination of some or all of the dealer's copies of reports of sale can be of great value in auditing a dealer's records. In the examination, notations of self-registrations, sales to leasing companies, sales to out-of-state residents, and registrations to other dealers should be made for reference in auditing self-consumed merchandise and deductions.

The auditor should verify that all dealer's report of sale books are available and have been accounted for in the taxpayer's records. As a routine procedure prior to beginning all used car dealer audits, a member of the district office staff must call DMV's Occupational Licensing Unit in Sacramento and obtain the serial numbers, year of issue, and total number of DMV Report of Sale Books issued to the dealer to assist the auditor in verifying whether all the dealer's report of sale books are available. The telephone numbers for this DMV Sacramento office is (916) 657-6621 or CalNet 437-6621.~~are:~~ The auditor will be asked to give the Board's requester code and the dealer's license number.

~~Dealer License No.~~

~~Ending In~~	~~Lease Line Phone No.~~	~~Off Network Phone No.~~
	~~(Outside Sacramento Area)~~	~~(Within 40 Miles of Sacramento)~~
~~0, 1, or if number unknown~~	~~8-497-7637~~	~~(916) 732-7637~~
~~2, 3, 4, or 5~~	~~8-497-7746~~	~~(916? 732-7746~~
~~6, 7, 8, or 9~~	~~8-497-7556~~	~~(916) 732-7556~~

This information must be entered on the reverse side of the Form BOE~~T~~-414 for use during the audit.

In new car dealer audits, the information should be obtained from DMV only when poor records, loose internal control or other special circumstances warrant.

Occasionally, dealer's report of sale books may not be available and must be obtained from ~~the Department of Motor Vehicles~~DMV by the auditor, because DMV has secured them for audit or the dealer has ceased operations.

EXAMINATION OF SALES JOURNALS 0604.40

(a) NEW CAR RETAIL. The standard journals prescribed by the manufacturers are usually printed with account titles and account numbers. Most sales journals are set up to automatically update their corresponding cost and inventory account. They are self-explanatory following examination of the general ledger accounts. The general composition should be examined with particular attention to postings to the general ledger ~~columns~~, credit postings to expense accounts for a portion of the new car selling price or credit against new inventory cost of sales indicating existence of underallowance, and debit ~~(red figure)~~ entries to sales accounts.

(b) NEW CAR FLEET. Postings are also from new car vehicle contracts or deal jackets~~invoices~~, but the sales are to leasing companies and purchasers who buy in quantity at a special discount. Generally, customer (lessee) names are entered in this journal. It is necessary to trace entries to other sources such as deal jackets, vehicle contracts or sales tax worksheets to determine if the sale was made to a leasing company. The considerations are the same as for "New Car Retail." Some dealers may not maintain a separate fleet sales journal and leasing transactions may be located in the new car journal. Dealers with large in-house rental department may maintain a lease and rental journal.

(c) NEW COMMERCIAL. Postings are from new car invoices in the same numbered series as passenger cars, or from a separate series of invoices devoted solely to commercial vehicles. In addition to the considerations noted in the foregoing paragraphs, special attention must be given to the manner of handling special bodies. Often, the special bodies are by separate contract and the systems for controlling such sales vary.

(d) USED CARS. The sales contained in this journal cover used cars- retail, used cars- wholesale, used trucks- retail, used trucks- wholesale and sales of repossessions. Postings are based on used car vehicle contracts or deal jackets.~~invoices~~. Again, aside from general composition of the journal, particular attention should be paid to general ledger ~~column~~ postings and debits to sales accounts. In addition, the auditor should be alert for discount accounts and combination of both wholesale and retail sales in the single column of repossessions. In scanning ~~the~~ sales ~~columns~~, the auditor should take note of the margins of profit on used car - retail sales, since abnormally high margins are indications of deflating trade-ins.

(e) PARTS, ACCESSORIES AND SERVICE JOURNAL. This journal is a summary of repair orders and counter sales invoices as recorded in the daily sales summary. It must be scanned for the combining of taxable and non-taxable sales in posting. Some dealers add small charges to repair orders for supplies used and credit this amount to expense accounts rather than to a taxable sales account.

(f) INTERNAL. The composition of the journal has the characteristics of both the service and parts journal, and postings to this book of original entry are from internal repair orders and sales invoices. This journal is peculiar to automobile accounting and is a means for the selling department to apportion its cost of doing business to another department within the dealership. ~~Its purpose is to allocate expenses and establish cost control.~~ Sales to consumers should never be entered in this record. Indications of self-consumption are noted in this record by examination of debits to company car and demonstrator expense accounts. The bulk of the entries will reflect parts withdrawn from parts department and labor from the service department in connection with work done on vehicles held for sale.

VEHICLE CONTRACT~~CAR INVOICE~~ DATA 0604.45

This section is concerned only with vehicle contracts~~car invoices~~. Invoices on repair orders are discussed under labor in Section~~s~~ 0611.0~~10 to 0611.45~~. Invoices on parts and accessories are discussed in Section 0607.30. The extent of examination of vehicle contracts~~car invoices~~ is determined by the volume of sales, number of contracts~~invoices~~, and indications of discrepancies from sales tax working papers, sales tax accrual account, or other sources.

Vehicle contracts are usually filed in alphabetical order by customer name and sales figures are transcribed to deal jackets that contain preprinted account numbers.~~Copies of invoices filed in numerical sequence in a binder are used as the posting copy to the car sales journals. Often the posting data are placed on the reverse side of the invoice since the face of the invoice contains lumped amounts and gives no indication of account numbers.~~ The figures from the deal jacket are posted to the sale journal. Stock numbers are usually assigned in numerical sequence to new, used and repossessed units acquired. A used unit accepted in trade on the sale of a new unit is often assigned the same stock number as the new unit sold, but followed, for example, by the letter "A." A used unit accepted in trade on the sale of another used unit is often assigned the same stock number as the used unit sold, but followed, for example, by the letter "B."

Examination of the face of the vehicle contract ~~invoice~~ should be made for content, and comparison of content with posting data on the deal jacket and tracing to the sales journal.

~~The numerical sequencing should be noted and compared with the sequence in sales journals.~~ Particular attention must be paid to voided contracts~~invoices~~ and the use of the contracts~~invoices~~ as credit memos.

EXAMINATION OF CUSTOMER FOLDERS 0604.50

The customer~~'s~~ folder is also referred to as car jacket or deal jacket and usually includes a copy of the motor vehicle contract and security agreement or vehicle purchase order, credit application, DMV documents, sales~~car~~ invoice or summary, ~~customer's (car) purchase order, conditional sales contract,~~ trade-in information, and other memoranda. The extent of testing will be determined by the volume of sales and the number, nature and measure of any exceptions noted.

The wholesale value given in the current Kelley Blue Book may be used as a guide in determining whether value of the trade-in is the "fair market value."~~.~~ The wholesale value is defined as the "average cash value of a clean car fully reconditioned." In many instances a dealer will allow the wholesale "Blue Book" less costs of reconditioning which is a "fair market value."~~.~~ Information pertaining to underallowances is included in Section 0604.52.

Although this scenario is not likely, ~~P~~particular attention must be given to the comparison of purchase~~car~~ order~~s~~ and vehicle contract~~invoices~~ in those dealerships where the customer is not furnished a copy of the contract.~~invoice.~~

The status of the conditional sales contract as a controlling document has been recognized by legislation through the Rees-Levering Motor Vehicle Sales & Finance Act, effective 1-1-62. It requires that all aspects of agreements between the buyer and seller of a motor vehicle be contained in a single conditional sales contract. It also required that the contract set forth as a separate item the cash price of the motor vehicle described in the conditional sales contract.

UNDERALLOWANCES ON TRADE-INS 0604.52

When a vehicle is traded-in on a purchase of a new vehicle, the measure of tax on the new vehicle includes the amount agreed upon between the seller and buyer as allowance for the merchandise traded-in pursuant to Regulation 1654(b)(1)~~. notes that total sales include agreed allowances for property traded in.~~ The regulation further notes that when the Board finds that the allowance is less than the fair market value, it shall be presumed that the allowance was such market value. Therefore, the fair market value of the new vehicle sold should not be redetermined merely because the trade-in allowance was below the price listed in the Kelley Blue Book, as long the underallowance was a result of a bonafide transaction between the buyer and seller.

An auditor may rebut the presumption provided in Regulation 1654(b)(1) that the agreed value of the trade-in represents the fair market value if there is sufficient evidence to establish that the dealer deliberately underallowed the trade-in value to reduce the measure of tax. Under such circumstances, the underallowance is taxed as additional gross receipts and a 25% intent to evade penalty may be appropriate. Intent to evade may be evidenced by:

1. Recorded trade-in allowances that are consistently below market value and that are not attributed to less than fair condition of the trade-in.
2. Gross profit margins that are consistently lower on transactions involving trade-ins than on those without trade-ins and which are not attributed to business practices followed by the industry, such as trades on loss-leader automobiles, or trades during promotional sales.
3. A widespread pattern of underallowances occurring consistently throughout the audit period.

If an underallowance is an isolated transaction or if found in a small number of transactions, further examination is necessary to determine whether the difference in trade-in value and the fair market value listed in the Kelly Blue Book is attributable to the condition of the vehicle, making the underallowance not taxable. However, if the dealer deliberately underallowed the trade-in value to reduce the measure of tax, the underallowance should be taxed as additional gross receipts and an intent to evade penalty may be appropriate.

Occasional instances of underallowances are generally not of sufficient tax consequence to warrant the audit time required to substantiate them. However, this should not prevent the assessment of tax on any underallowance even if a pattern is not present, if the amount involved is substantial, can readily be determined, and the evidence fully supports assessment of the lone transaction. For example, assume that in an audit of a Jaguar dealer, it is discovered that in the sale of a Jaguar for $80,000 that a Mercedes is taken as a trade and valued at $20,000 in the documents of sale. From an examination of the car jacket information for the Mercedes taken in trade, it is determined that the Mercedes was sold for $100,000 and its inventory value was set at $50,000 which was close to the Kelly Blue Book value. While this is an indication that an underallowance may be involved in the sale of the Jaguar by an apparent $30,000, more information concerning the sale price of the Jaguar needs to be established before recommending any liability based on underallowances; after all, we should not penalize a dealer for making a good deal. Accordingly, if similarly equipped Jaguars are sold for around the same sales price ($80,000), the evidence would seem to indicate that no liability should be established due to the underallowance. However, if information indicates that similarly equipped Jaguars are sold for $110,000, then the $30,000 underallowance should be considered as additional gross receipts and a tax liability established accordingly.

~~When underallowances are suspected, the auditor should ascertain whether this is a regular practice. This may be done by demonstrating that recorded trade-in allowances are consistently below market value, or that gross profit margins are consistently lower on transactions involving trade-ins than on transactions without trade-ins.~~

In determining fair market value, Kelley Blue Books may be used as a guide. However, it should be carefully noted that the wholesale values provided by this reference are average values for clean, fully reconditioned automobiles. The auditor should be alert to trade-ins which do not meet this definition. A below average trade-in allowance for an automobile in poor condition should not be treated as an underallowance. The subsequent sale of a trade-in at a less than normal price, expenses incurred by the dealer to repair or recondition the trade-in, may indicate that the automobile traded-in was not in average condition.

In auditing for underallowances, the first step would be to examine the new car sales journal and look for trade-ins with a credit to new car cost of sales. Normally, new car cost of sales is not credited in a new car sale posting. Tracing the transaction to the deal jacket could provide more information on the trade-in. For example, the actual cash value of the trade-in is $8,000 and the dealer allows a trade-in allowance of $5,000, crediting the difference to new vehicle cost of sales. The sales journal entries could be recorded by the dealer in the following manner:

New Car Sales Journal 10

Control #	Account #	Name of Account	Amount	Profit
	231Y	New Car Inventory Units	(1)	
	417	New Car Retail	($23,001)	
	417X	Units New Car Retail	1	
	617	Cost of Sales New Car Retail	$24,303	
70410	231B	New Car Inventory	($24,303)	
	324	Sales Tax Accrued	($1,898)	
70410	302	DMV Fees	($560)	
70410	304	Warranty Insurance	($500)	
70410	210	Notes Receivable Customer	$20,959	
	240X	Units Used Car	1	
70410A	240	Used Car Inventory	$8,000	
	617	Cost of Sales New Car Retail	($3,000)	$1,698

The control # refers to stock # of the vehicle. The vehicle contract shows a trade-in allowance of $5,000. However, the trade-in is posted to the used car inventory at the actual cash value of $8,000 as determined from the Kelley Blue Book wholesale value. Crediting new car cost of sale to balance the entry is called "grossing up the deal."

Other methods of recording the transaction include posting directly into an underallowance or other general ledger account, or adjusting inventory values in the general journal.

OVERALLOWANCES TAKEN AS DISCOUNTS 0604.55

Some instances may be found where dealers net from gross sales, or claim as a cash discount on their return, amounts allowed on used car trade-ins in excess of actual value of the trade-in. These excess amounts are known in the trade as overallowances. *Such overallowances are not deductible as discounts*. An example of a transaction of this nature is illustrated below:

Manufacturers list price is $20,000

Trade-in has a value of $5,000

	Correct Computation	Incorrect Computation
Price of car:	$20,000	$20,000
Sales Tax (@ 8.25%)	1,650	1,568
License:	400	400
	$22,050	$21,968
Trade-in Allowance:	6,050	4,968
Discount:	n/a	1,000
Balance:	$16,000	$16,000

The correct measure of tax is $20,000.

~~Manufacturers list price is $4000~~

~~Trade-in has a value of $1000~~

	~~Car Order~~	~~Invoice~~	~~Contract~~
~~Price of car:~~	~~$4000~~	~~$4,000~~	~~$4000~~
~~Sales Tax~~	~~240~~	~~210~~	~~240~~
~~License:~~	~~40~~	~~40~~	~~40~~
	~~$4280~~	~~$4250~~	~~$4280~~
~~Trade-in Allowance:~~	~~1580~~	~~1050~~	~~1580~~
~~Discount:~~	~~--~~	~~500~~	~~--~~
~~Balance:~~	~~$2700~~	~~$2700~~	~~$2700~~

~~In the case of a cash sale, only the car order and invoice will exist and the agreement between the parties is evidenced by the car order. In the conditional sale, the agreement of the parties is evidenced by the conditional sales contract. In either case, the measure of tax is $4000.~~

DISCOUNTS 0604.60

Virtually all new car dealers allow a discount on new vehicle sales. The amount of discount on any sale will be reflected on the documents of sale, and recorded in the sales journal as a discount. Discounts are netted from gross sales on the financial statements, either by decreasing sales or by showing the amounts of discounts as minus amounts on the statements. New car dealers will vary in their method of handling the discounts for reporting purposes. Some will segregate those amounts which are not valid discounts and add them to total sales, while others will add the total discounts to total sales and claim a deduction for the valid discounts. The mechanics of handling the discounts per the general ledger will be clear from the financial statements and sales tax working papers.

The auditor is more concerned with establishing the validity of the recorded discounts. The examination of the car journals~~,~~ and the reconciliation of the sales tax accrual account usually will disclose a dealer's practice of charging tax on the gross amount before discount. The more common practice, which is not apparent from the formal records, in mishandling discounts is the lack of agreement of documents. The wide range of errors that can occur with discounts is illustrated in the following examples.

EXAMPLE 1 - TAX ON GROSS

Situation: Recorded and reported amounts are based on the vehicle contract~~sales invoice~~ and discount of $1,000 claimed~~$500 claimed~~ or netted. Reported measure of tax is $19,000~~3500~~.

Selling Price	$20,000
Sales Tax (@8.25%)	1,650
License	400
TOTAL	$22,050
Settlement:	
Discount	1,000
Down Payment	1,000
Contract in Transit/Proceeds	$20,050
TOTAL	$22,050

Discussion: Discount is not allowable since tax was computed on the gross selling price.

EXAMPLE 2 - INFLATED CONTRACT

Situation: Recorded and reported amounts are based on the actual deal~~sales invoice~~ and discount of $1,000~~$500~~ claimed or netted. Reported measure of tax is $19,000~~3500~~. Proceeds from contract coincide with contract in transit. Selling price, tax, license and down payment were inflated on the contract in order to obtain lending institution acceptance.

~~Car Sales Conditional~~

~~Order Invoice Contract~~

~~Selling Price~~	~~$4000~~	~~$4000~~	~~$4600~~
~~Sales Tax~~	~~210~~	~~210~~	~~276~~
~~License~~	~~80~~	~~80~~	~~80~~
~~TOTAL~~	~~$4290~~	~~$4290~~	~~4956~~
~~Settlement:~~			
~~Discount~~	~~$500~~	~~$500~~	~~500~~
~~Down Payment~~	~~1090~~	~~1090~~	~~1756~~
~~Contract in Transit/Proceeds~~		~~2700~~	~~2700~~ ~~2700~~

	Inflated Contract	Actual Deal
Selling Price	$23,000	$20,000
Sales Tax (@8.25%)	1,898	1,650
License	460	400
TOTAL	$25,358	$22,050
Settlement:		
Discount	1,000	1,000
Down Payment	5,358	2,050
Contract in Transit/Proceeds	19,000	19,000
TOTAL	$25,358	$22,050

DISCUSSION: The discount is not a factor for consideration. The contract is the final document indicating agreement of the parties, and since sales tax reimbursement is computed on the inflated amount, tax of $1,898~~276~~ is due. The audited measure of tax is $23,000.~~4600.~~

EXAMPLE 3 - INFLATED CONTRACT

Situation: Recorded and reported amounts are based on the sales invoice, and discount of $1,000~~500~~ claimed or netted. Reported measure of tax is $19,000~~3500~~. Proceeds from the contract coincide with contract in transit. Selling price per contract includes tax and license, and contract was inflated to obtain financing.

	Actual Transaction	Inflated Contract
Selling Price	$20,000	$24,000
Sales Tax (@8.25%)	1,650	
License	400	
TOTAL	$22,050	$24,000
Settlement:		
Discount	1,000	1,000
Down Payment	2,050	4,000
Contract in Transit/Proceeds	19,000	19,000
TOTAL	$22,050	$24,000

DISCUSSION: In the absence of a separate statement of tax reimbursement and license on the contract, it is assumed that the gross amount includes both and the measure of tax is computed as follows:

Gross	~~$4800~~$24,000
Less: License Fee	~~80~~400
Net	~~$4720~~$23,600
Less: Sales Tax Included (@ 8.25%)	~~267~~1,799
Audited Selling Price	~~$4453~~$21,801

EXAMPLE 4 - TAX INCLUDED IN DISCOUNT

Situation: Recorded amounts are based on the figures posted on the deal jacket. Reported~~car order, which also serves as the invoice.~~

~~Reported~~ measure of tax is $19,076 ~~3528~~ (21,650-1,000)/1.0825. $\left[\frac{4240 - 500}{106}\right]$ The ~~conditional~~ vehicle~~sales~~ contract notes that sales tax is included at 7.62~~5.660~~%.

~~Order~~	~~Invoice~~	~~Contract~~
~~Selling Price~~	~~$4000~~	~~$4000~~
~~Sales Tax~~	~~240~~	~~240~~
~~License~~	~~80~~	~~80~~
~~TOTAL~~	~~$4320~~	~~$4320~~

~~Settlement:~~

~~Discount (Incl. sales tax @ 5.660%)~~	~~$500~~	~~$500~~
~~Down Payment 1040~~	~~1040~~	
~~Contract in Transit/Proceeds~~	~~2780~~	~~2780~~
Selling Price	$20,000	
Sales Tax	1,650	
License	400	
TOTAL	$22,050	
Settlement:		
Discount (Incl. Sales tax @ 7.62%)	1,000	
Down Payment	2,050	
Contract in Transit/Proceeds	$19,000	
TOTAL	$22,050	

DISCUSSION: The agreement of the parties reflects sales tax included in the discount on ~~both the car order invoice and~~ the vehicle contract. The proper measure of tax has been reported, regardless of the fact that recorded amounts do not reflect adjustments of tax accrual and discounts.

It should be noted that discounts, e.g., cash rebates given by a dealer to a customer in cash or as credit on the financing contract, or as a reduction in the selling price of the property, are not part of the dealer's gross receipts. ~~For periods prior to January 1, 1979, dealers who charge tax on the gross amount before discount collect excess tax reimbursement since tax is being charged on an amount (discount) which is not part of gross receipts. Examples 1, 2, and 3. are cases where excess tax reimbursement has been charged.~~

When sales tax reimbursement is computed on an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the dealer, the amount paid is excess tax reimbursement as defined in Regulation 1700(b). When the auditor ascertains that excess tax reimbursement was collected, the dealer will be afforded an opportunity to refund the excess collections to the customer. In event of failure or refusal of the person to make such refunds, the auditor will include the measure of excess tax reimbursement in the audit.

~~When such instances are noted, the auditor should not include the excess tax in the audit until the dealer has been given an opportunity to refund the excess tax to his customers.~~ In all cases, the auditor should encourage the dealer to refund the excess tax since it has been erroneously charged. (See Section 0417.00~~5~~.)

~~For periods on and after January 1, 1979, if a retailer adds to the sales price of tangible personal property sold at retail an amount represented to the customer as sales tax reimbursement in excess of the amount due and does not return the amount to the customer, the amount will be regarded as part of the price of the property sold. The retailer will be regarded as having sold the property for a price which includes sales tax reimbursement. Since gross receipts do not include cash discounts, the tax included sales price will be the gross amount of the sale, less the cash discount.~~

REBATES 0604.62

A **manufacturer's rebate** is an allowance made by the manufacturer directly to a consumer as an incentive to purchase the manufacturer's vehicle from a dealer. The rebate may be paid to the dealer, who in turn pays it to the customer, or it may be paid directly to the customer. Manufacturer rebates are considered part of taxable gross receipts. This is true even if the customer assigns the rebate to the dealer as down payment.

Under a **factory-dealer incentive**, the manufacturer sells the vehicle to the dealer at a discounted price to promote the sale of the vehicle. The dealer, in turn, is able to sell the car to the customer at a lower price. The amount of discount received by the dealer is not subject to tax. Tax is based on the selling price of the vehicle to the customer.

RETURNED MERCHANDISE - RESCINDED SALES 0604.65

A "roll back" is a vehicle purchased and operated on a Report of Sale and returned to the dealer (credit unavailable, customer changed mind, etc.) prior to completion of the transaction and issuance of the title. Since all fees, including transfer fees, are due to DMV, a dealer should not void the Report of Sale. A subsequent sale of a new vehicle roll back will require a Used Vehicle Report of Sale to the second buyer along with application for Original Registration listing the second buyer as registered owner. In case of a used vehicle roll back, there will be two Used Vehicle Report of Sale: one from the first buyer and one for the second buyer, and a Statement to Record Ownership in the name of the second buyer.

The accounting systems ~~provided by the major manufacturers do not~~ provide specific means for canceling sales or recording returns of merchandise already recorded in the various sales journals. New and used car dealers will follow one of the following methods discussed below.~~:~~

A direct entry reversing the original transaction can be made in the sales journal.

Another~~One~~ method which might be employed would be by a journal entry. The auditor would ordinarily examine these journal entries with deviations from prescribed procedures becoming readily apparent.

A~~nother~~ method occasionally employed by ~~occasionally employed, and more often by~~ used car dealers, is the lining out of the entry in the sales journal, especially if the return or cancellation is within the reporting period of the original sale.

~~The usual method, however, used by 60th new and used car dealers, is to reverse the transaction in the same sales journal in which it originally appeared. Such transactions are referred to in the trade as "roll backs".~~

Since ~~the footing of and~~ the posting from the sales journal will be net of ~~"~~roll backs~~"~~ as well as lined-out entries, the auditor must establish the amounts netted as being valid exclusions from taxable sales.

Occasionally, a vehicle originally sold by a dealer will be taken in trade on another sale within a short time after the first sale and the dealer will enter the trade as a ~~"~~roll back.~~".~~

Some dealers will ~~"~~roll back~~"~~ vehicles repossessed within a ~~fairly~~ short period of time after sale, especially if it is voluntary on the part of the customer.

In each case, the auditor should examine the customer's folder for receipts for refund of down payments, return of ~~his~~ trade-in, and for various correspondence, memos, notes, charges, etc., which could give clues as to the validity of the deduction. Sometimes the dealer returns the purchase price and the sales tax, but may not return the registration or license fees to the buyer. Since all fees are due to DMV within 20 days of the date of sale, the dealer is regarded as returning the full price of the vehicle. License and registration fees are not considered to be part of the sales price of the vehicle for sales tax purposes.

LICENSE FEES AND IN LIEU TAXES 0604.70

The Vehicle License Fee Law imposes a license fee for the privilege of operating in this State any vehicle of a type subject to registration under the Vehicle Code. This license fee, and the tax, in lieu of personal property tax, must be paid before plates will be issued for a new car or before current year plates will be issued for used cars equipped with prior year plates.

IN CONNECTION WITH NEW CARS 0604.75

The new car dealer, as a practical matter, may collect the amount of the license fee and in lieu tax involved and remit it to the ~~Department of Motor Vehicles~~DMV. In such cases, the dealer is merely accommodating the purchaser in remitting the fee, and the sales or use tax does not apply to the amount of fees paid by the dealer. If the amount collected from the purchaser exceeds the amount required to be remitted to DMV, excess fees collected are to be included in the additional measure of tax. The auditor should, therefore, examine the "License Fees" account in the general ledger for unreported taxable license fees collected.

IN CONNECTION WITH USED CARS 0604.80

In the case of used cars as well as new cars registered in the dealer's own name, license fees and in lieu tax paid by the dealer to the ~~Department of Motor Vehicles~~DMV prior to the time of sale are not a part of taxable gross receipts when added to the selling price of the vehicle under Sections 6011 and 6012 of the Sales and Use Tax Law. (*This exclusion~~exemption~~ does not apply to trailers, semitrailers, and dollies.*)

Sometimes a dealer will add an amount for "license" to a unit on which the fee was paid by someone else prior to the dealer acquiring the car. This charge is taxable since the dealer did not pay the fee to the ~~Department of Motor Vehicles~~DMV. Only when a used car is licensed by the dealer can the license fee be deducted from taxable sales when it is stated as a separate item to the customer.

DOCUMENTARY FEES 0604.82

A dealer may charge a document preparation service fee (doc fee) ~~A charge for "documentary fee, or fees" may be made by some automobile dealers~~ for the preparation of documents in connection with the sale of a vehicle, such as transfer papers required by the ~~Department of Motor Vehicles~~DMV. This fee is charged at the dealer's discretion and is neither required nor collected by DMV. The fee~~Such documentary fee and the charge therefor~~ may be preprinted on the car purchase order, vehicle contract, or ~~typed, or written in~~added by the automobile dealer. These charges are taxable as part of the selling price of the vehicle on which tax is computed and it is unlawful to represent this charge as a governmental fee.

~~Legislation allowing dealers to exclude documentary fees of up to $20 from the advertised price of vehicles effective January 1, 1979, does not change the taxability or the need to include such preparation charges in the gross receipts subject to sales tax.~~

SMOG CERTIFICATION FEES 0604.83

The Department of Consumer Affairs is required to make or authorize certain motor vehicle pollution emission inspections, and by statute is required to charge a certificate fee (currently $8.25) for the inspection. With each application to DMV for initial registration or transfer of registration of certain motor vehicles, a dealer must also transmit a valid pollution control (smog) device certificate of compliance. Although, there is no requirement that the dealer charge the purchaser for transmitting this certificate, they may choose to make a separate charge as cost of doing business. This charge is not subject to tax as long as it is separately stated and paid to the state by the dealer.

Other charges for smog check, (such as inspection charges) in excess of the certificate fee are taxable if the smog check is done for a vehicle that the dealer plans to sell. Smog fees in excess of the certification charge not related to a retail sale are exempt.

Effective July 1, 1994, purchasers of new vehicles or of commercial vehicles have the option to defer their first smog certification renewal to four years, from the current two years, by paying an additional $39 at the time of the initial purchase. The Smog Biennial Exemption fee is imposed by the state and exempt from tax as long as separately stated on the sales contract and paid to the state by the dealer.

OTHER CHARGES 0604.84

Dealer Installed Extras. These include accessories such as radios, heaters, air conditioning units, trailer hitches, etc. made prior to delivery of the vehicle to the customer. The charges for these dealer installed extras, including installation labor, are subject to tax.

Federal Excise Tax. A federal excise tax imposed on retail sales is not subject to tax.

Financing, Interest, and Insurance Charges. Separately stated charges for financing, interest and insurance are not subject to tax.

LUBE BOOKS 0604.85

When lube book charges have been included in the selling price of a new car on which tax has been computed, the auditor will include such charges in audited total sales.

When the lube books are sold ex-tax, the method of handling redemption of the coupons will be determined in the examination of repair orders to establish liability, if any, for grease.

UNDERSEAL AND PORCELAINIZE 0604.90

Amounts of these sales vary, and in many dealerships, are non-existent. One of two methods of recording the sales in the new car journal is usually employed:- the first being a credit to an inventory account, and the second a credit to labor or sublet repair sales. *If these charges are part of the new car selling price, they must be included in taxable sales.*

DELIVERY CHARGES 0604.95

The majority of dealers do not make separate charges for delivery. When madethey are involved, the charges usually are nominal and must be examined for compliance with the provisions of Regulation 1628, DeliveryTransportation Charges.

ESCROW FEES ON MOBILE HOMES 0604.98

Effective January 1, 1980, sSeparately stated escrow fees on the sale orf purchase of a new or used mobile home shall be excluded from the terms "gross receipts" and "sales price" for sale and use tax purposes.

OTHER SALES OF NEW AND USED VEHICLES 0605.00

SALES OF COMPANY CARS AND SERVICE CARS 0605.05

The method of recording sales of company cars and service cars varies. The fact that the unit is sold is, of course, determined from the credits to the respective asset accounts. In some cases, the sale is recorded by general journal entry, and in others the sale is invoiced and entered in the sales journal~~, but postings are to the general column rather than a sales column~~. The car may be transferred to new or used car inventory, and the sale recorded as a routine sale.

The method employed should be clear after examination of the general ledger accounts and sales tax working papers.

SALES OF REPOSSESSIONS 0605.10

Repossessions are divided into two categories, voluntary and involuntary. The latter are more common and are usually reflected in the dealer's books as inventory items as the balancing debit entry to the disbursement of money to the lending institution. Examinations of general ledger accounts and used car journals establish the proper handling of involuntary repossessions. There is a gap, however, that must be recognized by the auditor. That is, ~~that~~ a time lag often exists between the time of repossession and the demand for payment against the dealer under the recourse provisions of the contract. During this period, the owner may reinstate or refinance the car. Also during this period, the dealer, if the car is on his/her premises, will attempt to negotiate a sale if reinstatement is not effected. In the event a sale can be arranged before the demand payment is due, the dealer may treat the transaction as a transfer of equity or write a new contract with the proceeds applying against the demand amount.

The voluntary repossession results when the original purchaser presents the car to the dealer of his own volition, and without the knowledge of the lending institution. This allows the dealer more latitude in time in securing a buyer before the demand payment is issued.

Audit procedures are parallel to those discussed in transfers of equity and consigned cars. (See Sections 0605.15 and 0605.20)

TRANSFERS OF EQUITY 0605.15

A transfer of equity, in the true sense, is a sale between two individuals in which the purchaser assumes the conditional sales contract balance of the seller.

A true transfer of equity, in which the dealer has no function other than the approval of the transferee, results in no additional tax liability to the dealer. If, however, the dealer assists to the extent of displaying the car on his/her lot, or obtaining the transferee and negotiating the transfer at the dealer's place of business, a sale subject to sales tax has occurred. If the dealer's participation extends only to bringing the two parties together with the negotiations handled by the parties and the lending institution, the dealer has no liability.

The involvement of dealers in these transfers occurs since the dealer wrote the original contract and has future liability on recourse paper in the event of default. A transfer of equity usually arises because the buyer i~~has~~s overextended ~~himself~~ financially, and the likelihood of repossession is probable. The dealer in order to forestall a repossession may attempt to encourage a transfer of equity.

Evidence of transfers ordinarily will not be found in sales journals or any other formal records. The dealer's reserve statement is the only supporting document reflecting transfers of equity. This statement will show the change in names, but examination of these statements is awkward and not a recommended procedure. Evidence of equity transfers is~~are~~ most likely to be found in a customer folder prepared on the transferee.

~~TRANSFERS OF~~ WARRANTIES 0605.17

Pursuant to Regulation 1655(c)(1), a warranty is mandatory if the buyer, as a condition of sale, is required to purchase the warranty from the seller. A warranty is optional when the buyer is not required to purchase the warranty from the seller, but may purchase the warranty at his/her option for an additional or separately stated charge.

A manufacturer's warranty is defined as a warranty provided by the vehicle manufacturer and sold by a vehicle dealer along with the vehicle. A repairer's warranty is defined as a contract between a vehicle owner and a vehicle dealer or repair shop.

If the vehicle is sold at retail, the mandatory warranty charge is taxable whether separately stated or not. When the manufacturer is obligated to furnish parts under a mandatory warranty, the dealer's charge to the manufacturer is a sale for resale and not subject to tax. (See Section 0605.19 for tax application for deductibles and table.)

~~A transfer of a mandatory warranty is a transfer of the obligation of the manufacturer to provide replacement ports and/or labor pursuant to the warranty to the new owner in the event that such parts and/or labor are needed and is not a sale of tangible personal property. Warranty transfer fees are therefore not subject to sales tax.~~

~~Such a warranty remains in existence and follows the ownership of the automobile until the period of its effectiveness has expired. Parts provided and used after a warranty has been transferred are, for the purpose of the low, purchased at the time of the original sale; and since the warranty applies to the automobile itself, the furnishing of parts pursuant to the warranty, either to the purchaser/owner or to subsequent owners, is not subject to sales tax. The sale of the replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable (See Sales and Use Tax Regulation 1655(c)(2).)~~

Charges for optional warranties that are separately stated are not subject to tax. Pursuant to Regulation 1655(c)(3), a person obligated under an optional warranty contract to furnish parts, materials, and labor necessary to maintain the property is the consumer of the materials and parts furnished and tax applies to the sale of these items. Thus, when a dealer makes repair work for a manufacturer or third party obligated under an optional warranty, the dealer is making a retail sale of the parts furnished in performing the repairs.

However, if the repair is covered by an optional repairer's warranty, the dealer or repair shop is the end user of the parts. As such, tax is due at the time the parts are purchased or used on warranty repairs based on the purchase price. (See Section 0605.19 for optional repairer warranties requiring deductibles and table.)

TRANSFERS OF WARRANTIES 0605.18

A transfer of a mandatory warranty is a transfer of the obligation of the manufacturer to provide replacement parts and/or labor pursuant to the warranty to the new owner in the event that such parts and/or labor are needed and is not a sale of tangible personal property. Warranty transfer fees are therefore not subject to sales tax.

Such a warranty remains in existence and follows the ownership of the automobile until the period of its effectiveness has expired. Parts provided and used after a warranty has been transferred are, for the purpose of the law, purchased at the time of the original sale; and since the warranty applies to the automobile itself, the furnishing of parts pursuant to the warranty, either to the purchaser/owner or to subsequent owners, is not subject to sales tax. The sale of the replacement parts and materials to the seller furnishing them is a sale for resale and not taxable.

DEDUCTIBLES ON WARRANTY CONTRACTS 0605.19

Mandatory Warranties

Repairs performed under a *mandatory* warranty are taxable sales *only* if the warranty requires the customer to pay a deductible or a portion of the parts charged. Only a portion of the deductible paid by the customer to the dealer under a mandatory warranty is considered a retail sale to the customer (only the portion that applies to parts). The tax due is based on the ratio of the billed price for the parts to the total billed price (not including tax), before the deductible, and the deductible is multiplied by this ratio.

> **Example 1:** A customer is required to pay a $50 deductible under a mandatory warranty. The total billed price for the repair work is $200 (not including tax): $75 for parts and $125 for the labor. The portion of the deductible amount subject to tax would be computed as follows: $75 ÷ $200 = 37.50% X $50 deductible = $18.75. Tax due on the deductible payment equals $1.36 ($18.75 X .7.25% tax rate).

If a specific payment is made for parts (e.g., a prorated payment is made for a new tire), tax applies to that payment. However, portions of deductible payments are taxable only when the charges include the sale of parts.

Optional Warranties

The sale or purchase of parts furnished as part of a repair covered by an *optional* warranty is taxable. If the optional warranty states that the manufacturer will pay the total amount of sales tax due (whether or not the customer pays a deductible), the dealer or repair shop can charge the manufacturer for the full amount of the tax liability.

If an optional manufacturer's warranty requires the customer to pay a deductible and does not state that the manufacturer will pay the full amount of sales tax due, the dealer or repair shop must prorate any charges for sales tax reimbursement between the customer and the manufacturer.

> **Example 2:** Use the figures shown in Example 1 above. For a repair made under a manufacturer's optional warranty that requires a customer deductible, sales tax would apply to the full parts charge ($75 parts X 7.25% tax rate = $5.44 tax). The total charges for the job would be $205.44 ($200 parts/labor + $5.44 tax). The invoice to the customer would be for the $50 deductible, plus applicable tax, $1.36 (see above). The manufacturer would owe the balance of the charges, $154.08, including $4.08 in tax ($5.44 total - $1.36 paid by customer).

Total charges (parts, labor, tax)	$205.44	(itemize on invoice)
Customer deductible	-50.00	
Tax applicable to deductible	-1.36	
Balance due from manufacturer	$154.08	

The invoice to the manufacturer should include both the total charges and credits for the amounts paid by the customer.

If a repairer's optional warranty requires the customer to pay a deductible, a portion of the deductible payment is considered to be for parts and is subject to sales tax. The dealer or repair shop is considered the end user of a portion of the parts and a seller of the remainder (see Example 1 for method of prorating portion of deductible as a seller).

APPLYING TAX TO WARRANTY REPAIR CHARGES

Mandatory Warranties		
Warranty type terms	**Application of tax to part charges or cost**	**Responsible party: payment to dealer/repair shop**
Manufacturer's warranty No customer deductible Requires manufacturer to provide/pay for parts	Nontaxable resale of parts to manufacturer	*Customer*: no payment *Manufacturer*: charges for parts and labor
Manufacturer's warranty Customer deductible Does not require manufacturer to pay all sales tax due	Portion of deductible taxable as retail parts sale (see Example 1) Remaining parts charges are nontaxable resale to manufacturer	*Customer*: deductible plus tax amount due on portion of deductible (see Example 1) *Manufacturer*: total charges minus amount paid by customer
Manufacturer's warranty Customer deductible Requires manufacturer to pay all sales tax due	Portion of deductible taxable as retail parts sale (see Example 1) Remaining parts charges are nontaxable resale to manufacturer	*Customer*: deductible only *Manufacturer*: total charges (including tax amount due on portion of deductible- see Example 1) minus deductible amount
Repairer's warranty No customer deductible Requires repairer to furnish/install parts	Sales or use of repair parts not taxable (repair parts considered part of original sale)	*Customer*: no payment
Repairer's warranty Customer deductible	Portion of deductible taxable as retail parts sale (see Example 1)	*Customer*: deductible plus tax amount due on portion of deductible (see Example 1)

Optional Warranties		
Warranty type terms	**Application of tax to part charges or cost**	**Responsible party: payment to dealer/repair shop**
Manufacturer's warranty No customer deductible	Taxable retail sale of parts to manufacturer. Tax based on fair retail selling price of parts.	*Customer*: no payment *Manufacturer*: total charges (parts, labor, tax)
Manufacturer's warranty Customer deductible Does not require manufacturer to pay all sales tax due	Taxable retail sale of parts to manufacturer. Tax based on fair retail selling price of parts.	*Customer*: deductible plus tax amount due on portion of deductible (see Example 2) *Manufacturer*: total charges minus customer's payment (see Example 2)
Manufacturer's warranty Customer deductible Requires manufacturer to pay all sales tax due	Taxable retail sale of parts to manufacturer. Tax based on fair retail selling price of parts.	*Customer*: deductible *Manufacturer*: total charges minus customer-paid deductible
Repairer's warranty No customer deductible	Repairer considered end user of parts; parts cost subject to tax.	*Customer*: no payment
Repairer's warranty Customer deductible	Repairer considered end user of a portion of the parts and seller of the remainder (see Example 1)	*Customer*: deductible plus tax amount due on portion of deductible (see Example 1)

CONSIGNED CARS 0605.20

Consigned cars are usually customers' used cars which the dealer sells o~~i~~n behalf of customers. The car does not become a part of inventory, and the transfer to the buyer is not always effected on a dealer's report of sale. In some cases, a consignment agreement is prepared and is the basis for acceptance of an offer and settlement of monies. In the true consignment sale, the dealer has possession of the car and displays the unit with the used car inventory.

Generally, the dealer holds out to the prospective buyer that the car is a part of his/her inventory. Therefore, monies received will be reflected in cash receipts, and settlement of account with the consignor will be by credit to accounts receivable in the cash receipts journal or remittance in the cash disbursements journal. Expense of preparing the car for sale will often be reflected by a repair order. If the buyer must finance the car, the contract will be reflected along with the receipt of proceeds.

ACCOMMODATION SALES 0605.25

Accommodation sales differ from consignment sales in that the cars are usually the personal cars of management personnel, salespersons~~men~~ or employees. It is immaterial that the car was displayed at the dealer's place of business. The dealer will be liable for sales tax under Regulation 1566, Automobile Dealers and Salesmen, only if one of the following occurred:

(a) The dealer prepared a dealer's report of sale.

(b) The dealer executes a conditional sales contract on which the dealer's name appears as seller.

ACCOMMODATION REGISTRATIONS AND DELIVERIES 0605.30

Many automobile manufacturers occasionally request a franchised dealer to receive a vehicle, prepare it for delivery, complete a Dealer's Report of Sale, and deliver the vehicle to the manufacturer's employee or an employee of a subsidiary company. Where the vehicle is registered in the name of the manufacturer or a division thereof, there has been no sale and the manufacturer is liable for use tax on the vehicle cost as indicated in Section 0606.07. Where the vehicle is registered to a subsidiary company, the manufacturer is liable for the sales tax measured by the inter-company transfer price. The dealer should be held accountable for the tax on such accommodation deliveries only if it was collected by the dealer.

If accommodation registrations and deliveries as described above are noted during audits of local dealers, the auditor should prepare an audit memorandum, Form BOE~~T~~-1164, and forward it to the Out-of-State District. The memorandum should indicate the manufacturer's invoice number, date, vehicle identification number, the purchaser's name as shown on the invoice and as shown on the Dealer's Report of Sale, and whether tax was collected and reported by the dealer.

COURTESY DELIVERIES - FACTORY DIRECTED 0605.35

A factory directed courtesy delivery is a transaction in which an out-of-state dealer sells a vehicle to a customer but directs the manufacturer to make delivery to the customer at a specified location in California. The manufacturer delivers the vehicle to a local California dealer who redelivers it to the customer. The delivering dealer normally charges the manufacturer for new car preparation but the vehicle is not entered in the dealer's inventory and very often the dealer does not prepare a report of sale.

If courtesy deliveries to customers are made at the direction of manufacturers not engaged in business in California or who do not have California Seller's permits and dealers' licenses from DMV, they should be included in the audited sales of the delivering California dealer. The California dealer is considered to have made a retail sale under the second paragraph of Law Section 6007.

Courtesy deliveries are not sales by the dealer, and the dealer adds the taxable measure to the financial statement sales on the sales tax worksheets. Courtesy deliveries may be recorded in the new car sales journal, cash receipts journal, and sometimes booked in the general journal. The auditor should ask the taxpayer's representative how the dealership records these transactions in order to save audit time.

COURTESY DELIVERIES - FACTORY DIRECTED - FOREIGN SALES 0605.40

Domestic automobile manufacturers have programs whereby dealers in foreign countries negotiate sales of American-made automobiles to persons wishing to take delivery in California. These vehicles are sold primarily to U.S. Military Service Personnel and State Department employees returning to the States from overseas assignment. These sales are, for the most part, negotiated at U.S. Military Post Exchanges in foreign countries and the orders are transmitted to the manufacturer's foreign marketing organization for acceptance. The manufacturer is directed to make delivery to the customer at a specified location in California. Tax would apply to this type of transaction.

COURTESY DELIVERIES - NOT FACTORY DIRECTED 0605.45

This type of courtesy delivery involves a delivery from the dealer's inventory to a customer of an out-of-state dealer based on direct correspondence between the respective dealers, and without participation by the manufacturer. The local dealer will invoice the out-of-state dealer for the car. Deliveries in this state to the out-of-state dealer's customers are taxable to the delivering dealer pursuant to Law Section 6007.

There is sometimes a question whether the person taking possession of the car in California was a "driver" for the out-of-state dealer or the ultimate customer. In this case, the auditor may request that the out-of-state dealer furnish a ~~photostat~~copy of the out-of-state registration.

The relief of inventory and charge to the out-of-state dealer is usually effected through the New Car Purchase Journal. Since such credits to inventory are offset against purchases, and the net debit is posted to the general ledger account, no indication of this type of delivery is found during examination of the general ledger. Although a New Vehicle Report of Sale marked “Courtesy Delivery” is required to be prepared, ~~Nor will~~ an examination of the DMV Reports of Sale may not disclose all courtesy deliveries since with many of the deliveries the out-of-state dealer furnishes plates of his/her state.

A detailed scrutiny of all credits to inventory in the New Car Purchase Journal is therefore necessary. Questioned items should be scheduled. In some instances, invoices for sales to other dealers will be prepared and maintained separately. Examination of such invoices will usually establish that the majority of credits involve trading of cars between recognized dealers in the same locale. These will usually be sales for resale. However, some trades may be questionable, as for example, the transfer of a Chevrolet truck to a Pontiac dealer for use as a parts department truck.

SELF-CONSUMED MERCHANDISE 0606.00

GENERAL 0606.05

In general, the verification of self-consumed merchandise of an automobile dealer will follow that of any other retailer; however, there are some special aspects involving demonstrators, company cars, service cars, maintenance of these cars, and other items. The circumstances and the special provisions applicable thereto are discussed in the following sections.

MANUFACTURERS AND DISTRIBUTORS OF MOTOR VEHICLES 0606.07

Motor vehicle manufacturing and distributing companies sometimes use their own vehicles ~~of their own~~ for purposes which give rise to use tax liability.

~~Effective 10-1-76, F~~for vehicles assigned for more than 12 months to persons for combined business and personal use and demonstration and display, or assigned to "pool service,"~~:~~ ~~M~~manufacturers must pay the tax on the purchase price of tangible personal property used to manufacture the vehicle, and distributors must pay tax measured by their purchase price of the vehicle. When manufacturers and distributors either assign vehicles to persons for less than 12 months, or assign "pool" service vehicles to visiting dignitaries, etc., for less than 12 months, the measure of tax is the fair rental value based upon 1/40th of the net dealer purchase price for each month of combined demonstration or display and use.

VEHICLES CAPITALIZED AS ASSETS ~~(Regulation 1669.5)~~ 0606.08

Except for vehicles held for the purpose of leasing, vehicles which are capitalized in an asset account and depreciated for income tax purposes are not held for sale in the regular course of business. Tax must be paid measured by the purchase price of such vehicles. (See Regulation 1669.5(a)(7).)

REGISTRATION ~~(Regulation 1669.5)~~ 0606.09

If a vehicle manufacturer, distributor, dealer, or lessor registers a vehicle purchased for resale in a name other than that of the manufacturer, distributor, dealer, or lessor while retaining title to the vehicle, the vehicle is not held for sale in the regular course of business~~,~~; and the manufacturer, distributor, dealer, or lessor must pay use tax measured by the purchase price of the vehicle. (See Regulation 1669.5(a)(8).)

The only exception is the loan of vehicles to school districts, California State Colleges, the University of California and veteran's hospitals for driver education purposes as provided in Regulation 1669.5(a)(4). Issuance of exempt plates is limited to governmental bodies by regulations of the ~~Department of Motor Vehicles~~DMV as the vehicles must be registered to them. Use tax will not apply in such cases.

RECORDING OF CARS USED AS DEMONSTRATORS 0606.10

Dealers usually record cars placed in demonstrator service in an inventory account separate from the regular new car inventory. The account will be titled "Company Cars" or "Demonstrators.". Depreciation is not claimed for income tax purposes on the cars recorded in these accounts. These accounts usually include the cost of demonstrators, as well as those cars assigned to salesmen, officers, partners, officials, and other employees. It may also include courtesy cars. Additionally, the number of demo cars can be scheduled from financial statement and traced to sales people, managers, officers, and others who have the vehicles assigned to them. The auditor can also take inventory of dealer plates and determine who is operating the vehicle with these plates.

This transfer from the regular new car inventory account to the company car and/or demonstrator inventory account, is usually accomplished by an entry or series of entries in the general journal. In some instances, no entry will be made in the records, the cost of the cars being allowed to remain in the regular new car inventory account. Evidence of this being the case usually can be detected in one or more of the following ways:

(a) Cryptic notations or signals in sales journals or on detailed new car inventory records.

(b) Entries in demonstrator expense accounts, internal sales, etc.

(c) Evidence of insurance coverage.

(d) Notations on documents covering subsequent sales of demonstrators.

(e) ~~Department of Motor Vehicles~~DMV Report of Sales. (Under the Motor Vehicle Code, dealers may operate demonstrators and company cars on dealer plates. The absence of a registration does not, therefore, preclude a taxable use of a car by the dealer.)

(f) Separate stock cards file. Stock cards are sometimes used to account for cars in demonstrator status.

(g) Repair orders may have a notation that the vehicle being repaired is a demonstrator.

(h) Inquiry of the taxpayer.

RENTAL TO SALES<u>PERSONS</u>~~MEN~~ FOR DEMONSTRATION ~~(Regulation 1669.5)~~0606.12

~~A d~~Dealer<u>s</u> who rent~~s~~ vehicles which are not mobile transportation equipment to <u>their salespersons</u>~~his salesmen is~~ <u>are</u> regarded as making continuing sales of the vehicles and must collect and pay tax on the rental receipts, unless <u>tax was paid</u>~~he has paid tax~~ measured by the purchase price of the vehicles. However, if the rental receipts are less than 1/60th of the dealer's purchase price of the vehicle for each month of the rental, the transaction will not be considered a bona fide rental, and tax will be measured by 1/60th of the purchase price for each month of such use. Tax applies to sales by dealers to their sales<u>persons</u>~~men~~ of vehicles to be used for demonstration and personal use. <u>(See Regulation 1669.5(a)(10).)</u>

DEMONSTRATION AND DISPLAY 0606.15

Regulation 1669.5, Demonstration, ~~and~~ Display and Use of Property Held for Resale– Vehicle, provides that a purchaser of a vehicle~~tangible personal property~~ under ~~who gives~~ a resale certificate ~~therefore~~, ~~and~~ who uses the property solely for demonstration or display while holding it for sale in the regular course of business, is not required to pay tax on account of such use. Demonstrators owned by dealers who do not allow their personnel to use such vehicles for purposes other than demonstration and display fall within the exemption.

TYPES OF VEHICLES NOT ORDINARILY SOLD ~~(Regulation 1669.5)~~ 0606.17

If a vehicle dealer or lessor purchases under a resale certificate a new vehicle of a type which the dealer is not franchised to sell, or does not ordinarily sell or lease as a new vehicle, and uses the vehicle for any purpose other than, or in addition to, demonstration or display, it will be presumed that the dealer is not holding the vehicle for sale in the regular course of business and that tax is due and measured by the purchase price of such vehicle. (See Regulation 1669.5(b)(1).)

APPLICATION OF TAX TO DEMONSTRATORS 0606.20

Dealers or lessors who allow their employees to use vehicles for purposes other than demonstration and display are liable for the tax on the fair rental value of the vehicles for the period of such other use.

Dealers who give resale certificates and then use automobiles for purposes other than demonstration or display while holding them for sale in the regular course of business are liable for use tax measured by the sales price of the automobile to them. However, when a series of vehicles are used in this manner for periods of less than six months, the use tax will be measured by the average cost of one vehicle for each 12 month period for each person to whom such cars are assigned. The average cost will be the weighted average of the cost of all vehicles so used by that particular person during the 12 month period. Tax applies to the subsequent retail sale of such vehicles.

Regulation 1669.5~~, effective October 1, 1976,~~ establishes the presumptions listed below with respect to vehicles which are registered in the name of the dealer or lessor and vehicles which are not registered. The presumptions established by the regulation determine whether vehicles are frequently demonstrated and the measure of the fair rental value. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

- When a vehicle dealer or lessor assigns a demonstrator to his/her vehicle sales personnel for a period not exceeding 12 months, the measure of tax is the fair retail value at 1/60th of the purchase price for each month of combined demonstration or display and use.
- When a vehicle dealer or lessor assigns a vehicle to employees or officers other than vehicle sales personnel for a period not exceeding 12 months, the measure of tax is the fair rental value at 1/40th of the purchase price for each month of combined demonstration or display and use. This includes vehicles used in the corporate officers' or employees' personal households that are assigned to the spouse of a corporate officer or employee when the vehicles are regularly available for use, including demonstration and display, by the corporate officer or employee.

- When a vehicle dealer or lessor assigns a vehicle to a person other than an employee or officer, such as a relative or business associate, the measure of tax is the purchase price of the vehicle, with the exception of vehicles assigned to the spouse of a corporate officer or employee as previously noted.
- When a dealer or lessor assigns a vehicle to a person for more than 12 months for business or personal use in addition to demonstration and display, the measure of tax is the purchase price of the vehicle. The 1/40th or 1/60th formula, as appropriate, may be used if the duration of combined use is not known at the outset, with the difference between cost and the formula to be paid when use exceeds 12 months.
- When a vehicle is purchased for resale and registered in the name of the dealer, the measure of tax is the fair rental value computed at 1/40th of the purchase price for each month of combined demonstration or display and use.

The following table illustrates the tax application to demonstrator vehicles which are also used partly for purposes other than demonstration and display.

VEHICLE OPERATIOR	PERIOD VEHICLE IN DEMO SERVICE	~~BEGINNING 10-1-76~~MEASURE
Sales personnel	12 months or less	1/60th of cost
Sales personnel	More than 12 months	Cost less reported demo credit
Nonsales personnel	12 months or less	1/40th of cost
Nonsales personnel	More than 12 months	Cost less reported demo credit
Nonemployees	No requirement necessary	~~c~~Cost

USED CAR DEALERS

A number of situations, which are often encountered when auditing used car dealers, require consistent handling.

(a) Where a used car dealer is found to be taking different cars for business and personal purposes rather than using one car for an extended period, it is reasonable to assume they are frequently demonstrated and displayed and the use of the 1/60th formula is appropriate.

(b) Where the used car dealer is using one car for an extended period of time, additional of frequent demonstration and display is required if the 1/60th formula is to be used in lieu of the "cost of one car per year" method.

(c) Generally, a new car purchased by a used car dealer or a new car dealer not franchised to deal in the type of car purchased, is not frequently demonstrated and displayed, but rather purchased for personal use. Accordingly, unless there is convincing evidence to the contrary, such automobiles should be tax-paid on cost. An example is a Volkswagen dealer purchasing a Cadillac under a resale certificate.

COURTESY VEHICLE LOANS 0606.25

In General - Vehicles Purchased under a Resale Certificate

When vehicles purchased under a resale certificate are loaned to customers who are awaiting delivery of vehicles purchased or leased from the dealer, or while the customers' vehicles are being repaired by the dealer, the measure of tax liability is the fair rental value of the loaned vehicle for the duration of each loan so made. If a specific charge is made for use of the vehicle, such charge shall be considered the fair rental value. If the dealer has previously reported tax on the cost of the loaner vehicle, no additional tax is due.

When vehicles are loaned to persons who are not customers awaiting delivery of a vehicle purchased or leased from the dealer, or the return of a repaired vehicle, there is generally no provision to measure use tax liability by other than the purchase price. However, if such loans are for very short periods of time, interspersed with frequent demonstration or display while holding the vehicle for sale in the regular course of business, the tax liability may be based on the fair rental value.

When the loan of a vehicle is not interspersed with frequent demonstration or display, but is loaned for a period of 30 days or less to a person other than a customer awaiting delivery of a vehicle or return of a repaired vehicle, tax is due on the fair rental value, provided the loaned vehicle was frequently demonstrated or displayed prior to being loaned and continues to be demonstrated or displayed following its loan. However, if the loan period does not constitute an incidental use (30 days or less) or the loaned vehicle is not frequently demonstrated and displayed during the period of loan, tax must be measured by the purchase price of the loaned vehicle.

When a lessor loans a vehicle to a lessee who is awaiting delivery or return of a leased vehicle, and the regular lease payments continue to accrue during the period of the loan, the regular lease payments will be considered to cover the use of the loaned vehicle.

Special Courtesy Vehicle Loan Programs

Special accommodation programs exist between vehicle manufacturers and dealers that require the dealers to maintain an inventory of a certain number of vehicles for the specific purpose of loaning the vehicles to customers who are awaiting repairs to their leased and/or owned vehicles. Generally, dealers purchase these courtesy loan vehicles under a resale certificate. Distributors will sell the vehicles to dealers with the understanding that the dealers use the vehicles exclusively for accommodation loan purposes for a certain period of time; thereafter the dealers are free to sell the vehicles. In many cases, the transaction between the distributor and dealer involves a finance company (generally related to the distributor) in which the vehicles purchased by the dealer are immediately sold to the finance company which leases the vehicles back to the dealer. In most cases, the lease is actually a sale at inception. In exchange for agreeing to the restrictions on use of the vehicle and ability to sell the vehicle, the dealer's lease payments may be subsidized.

Taxable Measure Under These Programs

If a dealer provides a courtesy accommodation loan to a customer who is awaiting the repair of a vehicle leased from that dealer or another dealer who is part of the integrated manufacturer's courtesy accommodation program, and the lease is a continuing sale, the vehicle loan is part of that continuing sale. In this case, the dealer is entitled to purchase the vehicle for resale and no further tax is due with respect to the vehicle loan made to the person leasing the vehicle.

Accordingly, dealers participating in the manufacturers' courtesy loan program may issue resale certificates to distributors for purchases of vehicles used exclusively as accommodation loans to persons leasing vehicles in continuing sales. However, except as discussed below, when dealers loan these vehicles to customers who own their vehicles (and to those whose leases are not continuing sales), the dealers are regarded as using the vehicles and owe use tax measured by the fair rental value of the vehicles loaned.

To support and document loan of courtesy vehicles to persons leasing in continuing sales, dealers should retain appropriate documentation to substantiate any claimed exclusion from measuring tax based on the fair rental value. Dealers should maintain documentation such as repair invoices, lease agreements, service or maintenance retention schedules, and other pertinent documents that support amounts claimed by the dealer. Sufficient documentation to distinguish between vehicle loans made to customers who own their vehicles and those leasing under a continuing sale must be retained by the dealers. If the dealer does not maintain the required documentation, the dealer owes tax on the fair rental value for all courtesy accommodation loans of these vehicles. Where the Board establishes a deficiency through the use of recognized and standard accounting procedures, the burden is upon the taxpayer to explain the disparity between the books and records and the results of the Board's audit.

In some instances, vehicle dealers do not actually lease vehicles. A separate related finance company or arm of the dealership or distributor becomes the ultimate lessor. Also, the lease agreements may show the dealership as the original lessor, but the lease is later assigned to a separate concern where all lease payments are remitted. Under these circumstances, accommodation loans provided to customers awaiting repair of vehicles leased should be treated as one transaction for purposes of a continuing sale whether the customer's lease originates through the dealer providing the accommodation loan or another dealer participating in the manufacturers' courtesy loan program.

If a dealer does not offer a vehicle as a daily rental, then the fair rental value is the amount for which other dealers in the area rent similar vehicles for similar periods to persons who are not customers awaiting delivery of vehicles purchased or leased or repaired by the dealer (Regulation 1669.5(b)(6)). If a similar vehicle is not leased (e.g. Lexus and Infiniti dealerships do not generally rent their vehicles), then a reasonable fair rental value of the accommodation loan vehicle for each month will be obtained by using 1/40th of the purchase price of the vehicle as outlined in Regulation 1669.5(b)(3)(A).

Mandatory or Standard Manufacturer's Warranty

As part of a mandatory or standard manufacturer's warranty, the manufacturer or warrantor may include a courtesy transportation program that provides the vehicle owner or lessee with a loaner vehicle while his or her vehicle is in for repair. When the loan of the vehicle is in fulfillment of the contract requirements of a mandatory or standard manufacturer's warranty upon which tax or tax reimbursement was paid at the time of sale, the loan of the vehicle is regarded as part of the original sales contract or lease agreement for the vehicle being repaired. The vehicle loans are not considered accommodation loans; they are considered part of the original sale contract.

When the vehicle being repaired is owned by the customer, tax does not apply to the use of the loaned vehicle. The loan of the vehicle is regarded as part of the original taxable sale or contract price of the vehicle being repaired for which the measure of tax included the warranty. Dealers may lease the vehicles from third parties ex-tax for resale or provide one of their own resale vehicles in fulfillment of the provisions of the original taxable sale.

When the warranty is optional, the dealer obligated under the contract is considered the consumer of the loaned vehicle. As the consumer, the dealer makes a taxable use of the loaned vehicle. Whether the loan of the vehicle is in fulfillment of the provisions of an optional warranty or an accommodation loan, tax is generally due on rentals payable (if the loaned vehicle is rented from another source) or fair rental value (if taken from resale inventory).

With respect to vehicles loaned to lessees of vehicles, it is irrelevant whether the lease contract requires the dealer and/or lessor to provide the lessee a loaner vehicle while the lease vehicle is being repaired. If the lease is a taxable continuing sale, the use of the loaned vehicle is regarded as part of the taxable continuing sale. Dealer/lessors may lease the vehicles from third parties ex-tax for resale or provide one of their own resale vehicles as part of the taxable continuing sale.

If the lease is not a taxable continuing sale (tax or tax reimbursement was paid on the purchase price of the vehicle), the dealer/lessor is not regarded as making a loan of the vehicle as part of the taxable continuing sale. Thus, the dealer/lessor is regarded as using any loaner vehicle provided to the customer whether that loan is required by the lease contract or not. The dealer/lessor may not lease the vehicle from third parties ex-tax for resale. If the dealer/lessor makes a use of one of its own resale vehicles, tax is generally due on fair rental value.

~~VEHICLES LOANED TO CUSTOMERS 0606.25~~

~~On cars loaned to customers who are awaiting delivery of vehicles purchased or leased from the dealer, or while the customer's car is being repaired by the dealer, the measure of tax liability is the fair rental value of the vehicle for the duration of each loan so made. If a specific charge is made for use of the vehicle such charge shall be considered to be the fair rental value. If the dealer has previously reported tax on the cost of a vehicle which is loaned to customers, no additional tax is due.~~

~~When a lessor loans a vehicle to his lessee who is awaiting delivery of a leased or repaired vehicle, and the regular lease payments continue to accrue during the period of the loan, the regular lease payments will be considered to cover the use of the substitute vehicle.~~

~~When a dealer or lessor loans a vehicle for 30 days or less to a person other than a customer awaiting delivery of a vehicle, tax is due on the fair rental value, providing this incidental use is preceded and followed by frequent demonstration and display. However, tax must be measured by the purchase price of the vehicle if it is not frequently demonstrated and displayed, and the use both exceeds 30 days and is not of an incidental nature.~~

~~VEHICLES LOANED TO OTHERS 0606.27~~

~~When cars are loaned to persons who are not customers awaiting delivery of a car purchased or leased from the dealer, or the return of the customer's car being repaired by the dealer, there is no provision to measure use tax liability by other than the purchase price. However, if such loans are for very short periods of time, interspersed with frequent demonstration or display while holding the vehicle for sale in the regular course of business, the tax liability may be based on the fair rental value.~~

COMPANY CARS 0606.30

Company cars are those vehicles available chiefly for company use by employees and with very little use, if any, for demonstration and display. *These cars will usually be recorded in the same account as demonstrators. The dealer must include the cost of such vehicles in the measure of tax paid by him/her. In the case of vehicles owned by factory branches, use tax would~~, of course~~, apply to the material used in manufacturing the car.*

SERVICE CARS 0606.35

The cost price of service cars, parts and service department vehicles, and tow trucks would be subject to tax.

New Vehicles:

The accounting systems prescribed by the major manufacturers require the cost of these vehicles to be capitalized in a fixed asset account and depreciated for income tax purposes. The account will usually be known as "Service Cars" or "Equipment."~~.~~

Used Vehicles:

All automobiles acquired by dealers from nonretailers as well as other dealers are subject to the use tax if placed in company service. The dealer would normally register the vehicle to the dealership by use of a used car report of sale. No use tax would be paid to ~~the~~ DMV on a transaction handled in this manner, hence the auditor should be alert for undeclared use tax as a result of such transactions.

LOANS TO SCHOOLS, COLLEGES, AND VETERANS' INSTITUTIONS FOR EDUCATIONAL OR TRAINING PROGRAM 0606.40

Section 6404 of the Sales and Use Tax Law exempts a retailer from the use tax on tangible personal property loaned to any school district for an educational program conducted by the district.

When a vehicle or tangible personal property is leased or sold to the school district, tax applies on rental receipts or cost of the units leased or on the selling price if the unit is sold. School districts include only tax supported districts of a city or county; they do not include private schools.

Section 6404 of the Sales and Use Tax Law extends the use tax exemption to the loan by any retailer of any motor vehicle to:

(a) California State Colleges or the University of California for the exclusive use in an approved driver education teacher preparation certification program.

(b) An accredited private or parochial secondary school for the exclusive use in a driver education and training program approved by the State Department of Education as a regularly conducted course.

(c) A Veterans Hospital or such other nonprofit facility or institution to provide instruction in the operation of specially equipped motor vehicles to disabled veterans.

When a vehicle is leased or sold to (a) or (b), tax applies on rental receipts or cost of the units leased or on the selling price if the unit is sold. When a vehicle is leased or sold to (c), tax applies on rental receipts or cost of the units leased or on the selling price if the unit is sold to any nonprofit facility or institution other than the Veterans Administration.

Refer to Section 0606.09 for registration qualifications when the organization to which the vehicle is loaned is a governmental body.

LOANS OF AUTOMOBILES TO UNIVERSITY EMPLOYEES 0606.42

Operative January 1, 1997, Section 6202.7 was added to the Revenue and Taxation Code. This law specifies that a retailer who loans any motor vehicle to any University of California or California State University employee is liable for use tax on that loan measured by the fair rental value for the period of the loan, provided all of the following conditions are met:

(a) The vehicle is for the employee's exclusive use.

(b) The loan has been approved by the chancellor of the university or president of the state university.

(c) It is demonstrated that the loan is not dependent upon the retailer receiving any future business from the university.

Prior to 1-1-97, a loan of a vehicle to U.C. or California State University for use in other than educational purposes, for a period exceeding 30 days and not frequently demonstrated and displayed, would have resulted in use tax due on the dealer's cost of the vehicle. Effective January 1, 1997, the vehicle loan is not limited to the use for educational purposes. It could be used by a university employee for any reason, e.g., going to the store, vacations, etc. and duration of the loan could exceed 30 days. The dealer would be liable for the fair rental value of the vehicle over the duration of the loan.

RENTALS TO OTHER THAN EMPLOYEES 0606.45

Dealers may rent vehicles to persons other than employees under the provisions of Regulation 1660, Leases of Tangible Personal Property - In General. Besides rentals to persons in no way connected with the dealership, dealers sometimes rent to members of the families of management personnel who do not qualify under Regulation 1669.5. The amount of rental must be equivalent~~commensurate~~ with the value of the car; and if it is not, the cost of the car must be included in the additional measure of tax.

COMPANY AND SERVICE CAR REPAIRS AND MAINTENANCE 0606.50

Expenses for repairs and maintenance of company cars and service cars are recorded as Demonstration Expense or Company Car Expense. The cost is recorded in the internal journal based on repair orders or counter sales invoices. In examining the detail of the posting to expense, auditor can ascertain the internal sales account credited, which will be the basis for establishing self-consumption. The tax ~~T~~treatment of the expense items ~~taxwise~~ is as follows:

(Cont.) 0606.50

TYPE OF VEHICLE	GASOLINE OIL, GREASE	PARTS ACCESSORIES
Cars taxable on 1/40th or 1/60th formula basis	Taxable	Non-taxable
Vehicles used as demonstrators only	Taxable	Non-taxable
Loan cars taxable on fair rental value	Taxable	Non-taxable
Loan cars tax paid on cost	Taxable	Taxable
Company cars, service cars, tow trucks	Taxable	Taxable
Vehicles held for sale only and neither demonstrated nor used	Non-taxable	Non-taxable

PAINT DEPARTMENT 0606.55

Where the dealer is engaged both in the sale of paint and its use in the service department for repainting customers' cars, the dealer is considered the consumer of paint purchased for resale and used in repainting customers' cars (Regulation 1551, Repainting and Refinishing). The cost of paint so used should be reported as self-consumed merchandise.

Paint sold to customers will be recorded on counter sales invoices and reflected as sales of the Parts Department. Charges for repainting customers' cars are made on repair orders and recorded in the parts, accessories, and service journal. Special paint jobs in conjunction with new car sales are recorded in the new car journal and are taxable as part of the new car selling price.

The auditor should establish the source of paint sales from examination of ledger accounts, and in turn the method of recording from the respective journals. The status of purchases being tax paid or ex-tax is readily established from purchase invoices.

On repair orders for repainting a customer's car, some dealers make a separate charge for paint material. If this is done, the dealer is selling paint at retail and is not the consumer as mentioned above.

Labor charges for painting a used part, or a new part before or after installing it on a used vehicle, are not taxable.

GREASE AND OIL 0606.60

Dealers are consumers of grease and oil used in the performance of lubrication service. The majority of dealers purchase these materials ex-tax, since some portion will be used in used car reconditioning and new car preparation. In these cases, the lubricant is sold with the car and no tax liability for self-consumed materials exists. Liability for materials used on redemption of lube coupons is based on dealers handling of lube book sales. (See Section 0604.85)

MISCELLANEOUS PURCHASES 0606.65

A test will usually be made of purchase invoice, with the extent of test based on size of dealership, prior audit findings, and the experience of the auditor. Purchases of fixed assets and expense items subject to use tax are the type of purchases most readily found.

Advertising specialties often are a major item. While license frame holders and key cases are normally in this category and purchased ex-tax, the majority of dealers provide these items with the new or used car and thus sell the frames or key cases with the car.

The nuts, bolts and cotter pins are often charged to an expense account when purchased. However, these items are considered as sold along with the part with which they are used. Therefore, if parts are sold, no measure of self-consumed merchandise would exist for the cost of these supplies. Some nuts and bolts are used on repair jobs on which no parts are sold and the cost of the supplies so used would be taxable.

The test should not be conducted in the initial stages of audit, but held in abeyance until the pattern of the dealer's operation is clear. The test is more meaningful if the examination is made to determine purchase details of ~~purchase of~~ sublet repair charges, paint, grease, tools, and supplies in addition to use tax purchases.

AUTO BODY REPAIR AND SHOP SUPPLIES 0606.70

Dealers and other businesses performing auto body work are generally considered the retailers of parts and materials remaining on the vehicle or item being repaired. The following are examples of parts and materials remaining on the vehicle or item being repaired that may be purchased for resale by the auto body and paint industry:

Automobile Parts	Glues/Adhesives	Putties
Clear Coats	Hardeners	Rust Protectors
Electrical Tape	Paints	Sealers
Fillers	Primers	

These types of parts and materials may be purchased for resale and tax charged on the selling price, itemizing them on the sales invoice. The purchaser must issue a resale certificate to the seller in order to purchase items for resale. The minimum requirements of a valid resale certificate are set forth in subdivision (b)(1) of Regulation 1668.

However, in certain situations relating to painting and body work, businesses are considered the end user, not the retailer, of parts and materials. If the value of parts and materials provided in connection with repair work on a used vehicle is *10 percent or less* of the total charge and billed lump-sum, the repairer (or dealer) is the consumer of parts and materials, and owes tax on ~~their~~his/her cost.

Dealers and other auto body and painting businesses are considered end users of tools and supply items that *do not* remain on the item being repaired. The following items are consumed by the auto body and paint industry and generally should not be purchased for resale:

Abrasives	Goggles	Polishing Machine
Attachment Tape	Hand Cleaners	Reducers
Books	Manuals	Respirators
Cans	Masking Paper	Rubbing Compounds
Cleaning Solvent	Masking Tapes	Rubbing Machine
Color Charts	Masks	Stripping Tape
Equipment	Metal Conditioners	Thinners
Equipment Repair Parts	Paint Remover	Touch-Up Bottles
Fisheye Eliminator	Plastic Bottles	Waxes
Glazes	Polishes	

The auto body and paint industry should pay tax at the time of purchasing these items. If, on occasion, an item is in fact resold by the purchaser prior to any use of the property, the purchaser may claim a tax paid purchase resold deduction. See Section 0419.25 for discussion of tax paid purchases resold.

Many automobile body repair shops make a separate charge to their customers for the cost of "supplies" as an extension of their charge for repair labor. Such separate charges for "supplies" which do not become a component part of the refinished article are not subject to tax on the selling price since title or possession of supplies is not transferred to the customer, and the repair shop or dealer as the consumer owes tax on their cost. However, if the evidence discloses that the charge for "supplies" is a surcharge on the sale of repair parts, the charge for "supplies" is subject to tax.

~~Generally, automobile body repair shops are considered the consumers of supplies, such as sandpaper, paint, thinner, abrasive, masking tape, etc.; and these items should not be purchased for resale.~~

SALES FOR RESALE 0607.00

GENERAL 0607.05

Verification of the deduction "Sales for Resale" should follow the same pattern as for other types of retailers. Resale certificates should be checked and their authenticity established in the usual manner, giving particular attention to isolated and nonrecurring sales which may disclose unauthorized or fraudulent use of resale certificates.

Examination of the various classes of resales to new car dealers, used car dealers, and leasing companies is discussed in the following sections.

NEW CAR RESALES 0607.10

There are usually only two types of sales for resale of new cars. They are sales to other new car dealers~~,~~ and ~~sales to~~ leasing companies. ~~These latter sales are not sales for resale, but are sales for renting or leasing.~~ Under the provisions of Regulation 1660, the lessor may give a resale certificate only if he/she intends to include all the rental receipts in the measure of tax ~~which he~~ reported~~s~~. If a vehicle is sold by a franchised dealer to another franchised new vehicle dealer, the first dealer must submit a Notice of Release of Liability. Whenever dealers sell new vehicles to a dealer of the same franchise, they are not required to report the transaction on the Wholesale Report of Sale. For resales to autobrokers see Section 0601.50.

RESALES TO LEASING COMPANIES 0607.15

Most new car dealers will sell automobiles to leasing companies for resale. The number of units and the number of leasing companies to whom a dealer sells will vary from a very few companies to several and the number of units from one or two a year to several hundred a year.

The auditor should verify that every leasing company to whom the dealer has made sales for resale, has furnished the dealer with a valid resale certificate, and that the certificate indicates all cars purchased are for resale. If the auditor finds that a leasing company is buying both for resale and tax paid at source, all purchase orders from that leasing company should be carefully scrutinized.

The auditor should trace a representative sample of sales for resale to leasing companies to the Dealer's Report of Sale. For purposes of determining the validity of a resale certificate taken by a dealer, the person or persons named on the Dealer's Report of Sale and Application for Original Registration will be considered as the purchaser from the dealer. Unless the person named as the purchaser on the resale certificate is also shown on the Dealer's Report of Sale and Application for Original Registration, either singly or jointly pursuant to Section 4453.5 of the California Vehicle Code, the Board will consider the transaction a retail sale and subject to tax.

Section 4453.5 of the California Vehicle Code permits the registration of vehicles in the names of the lessor and the lessee with their relationships shown as "lessor" and "lessee" in the following manner:

All State Leasing Co., Lessor

Robert J. Murphy, Lessee

If the joint form of registration is used, it is immaterial if the names are joined by "and" or "or". ~~T~~to the lessor in care of the lessee. If the lessor elects to register the vehicle in this manner, the "care of" must include the designated lessee as follows:

All State Leasing Co.

c/o Robert J. Murphy

or

All-State Leasing Co., Lessor

c/o Robert J. Murphy

If the name of a third person only is shown on the Dealer's Report of Sale and Application for Original Registration, the transaction will be regarded as subject to sales tax. The name of the third person would appear as:

Robert J. Murphy

or

Robert J. Murphy, Lessee

Lessors who own vehicles registered in the names of lessees only may have the registration changed to show either the lessor or the lessor and lessee relationship on the registration card. Where this is done they may continue to pay tax measured by the rental receipts. Further information on sales of vehicles to leasing companies is included in Regulation 1610, ~~–~~ Vehicles, Vessels, and Aircraft.

The auditor may find instances where a dealer sells cars to leasing companies for resale but does not register the cars by completing a ~~Department of Motor Vehicles~~DMV Application for Registration of New Vehicle ~~New~~. If the dealer has a valid resale certificate from the leasing company, the auditor should prepare Form BOE~~T~~-1164, Audit Memorandum of Possible Tax Liability~~Record of Ex-Tax Transactions~~. Further information on Form BOE~~T~~-1164 appears in Section 0401.20.

Many new car dealers are now engaged in leasing cars to the general public. The leasing operation is usually by a separate entity, and ~~conjunctive~~ audits of related accounts will normally~~, of course,~~ be conducted.

NEW CAR RESALES TO USED CAR DEALERS 0607.20

Occasionally, a new car dealer will sell new vehicles to used car dealers, apparently for resale. In the event the dealer has claimed such sales for resale, the deduction will be allowed, only if the following conditions are met:

(a) The dealer has not registered the car to someone other than the used car dealer, and

(b) The dealer has a specific resale certificate from the used car dealer on file.

An audit memorandum (BOE-1164) should be prepared on all sales of new cars by new car dealers, for resale, to used car dealers. In auditing the records of the purchaser (used car dealer), the fact should be verified that the vehicle or vehicles in question were actually purchased for resale and not for use.

USED CAR RESALES 0607.25

The auditor should question dealers' names that they~~he~~ do~~es~~ not recognize, verifying that such dealers exist and that the permit number is correct.

Some dealers may record a retail sale on a "Used Car Wholesale" purchase order filling in a fictitious or legitimate dealer's name and permit number, especially where they have in their possession vehicles on which the "Certificate of Ownership" (pink slip) has been signed in blank. Dealers must pay sales tax on ~~S~~such transactions ~~are subject to sales tax to the dealer~~.

The Wholesale Report of Sale is prepared to report sales of used vehicles from dealer to dealer. This includes wholesale transactions to out-of-state or out-of-country dealers, scrap metal processors, and dismantlers. In case of a wholesale roll back, the buyer must complete a Wholesale Report of Sale back to the selling dealer.

For sales on or after January 1, 1994, a Vehicle Auction Wholesale Report of Sale (REG 398) is required for sale or transfer of a vehicle by a dealer conducting a wholesale motor vehicle auction. These forms may be computer generated or ordered from DMV and include the identity of the vehicle, true mileage, buyer's name, auction's name and number, and the seller's name and signature. In addition to this form, the dealer is still responsible for completing and filing the Wholesale Report of Sale.

PARTS AND ACCESSORIES 0607.30

New car dealers may be ~~are~~ a prime ~~source of~~ supply source of parts for garages and other auto repair~~ers~~~~men~~. In some dealerships, the sales of "Parts–Wholesale" constitute a major portion of the Parts Department operation, while in others this type of transaction is minor or negligible.

These resales are usually generated~~written~~ on counter sales invoices and recorded in the Parts Accessory Journal. Testing of the counter sales invoices must be considered by the auditor based on volume, prior audit findings, and knowledge of the operation.

The auditor must be alert to combined taxable and non-taxable sales in the Parts-Wholesale and Accessories Sales accounts. ~~Sales of parts to fleet users often are recorded in the wholesale account and tax charged. The incidence of this deviation is~~ These types of transactions are not easily detected except by examination of counter sales invoices; however, indications of taxable and non-taxable combinations may be recognized from the sales tax accrual reconciliation. Some dealers will make separate totals of taxable and non-taxable in these mixed accounts.

U.S. GOVERNMENT SALES 0608.00

U.S. GOVERNMENT PURCHASE ORDERS 0608.05

The accounting procedures of most~~the majority of~~ instrumentalities of the Federal Government are such that purchase orders are mandatory. The seller is always given more than one copy of the purchase order and these copies are usually found in the customer folder. In the absence of the purchase order, correspondence is usually available which will give sufficient data to establish validity of the deduction.

DISABLED VETERANS' EXEMPTION 0608.10

Sales of vehicles to disabled veterans may qualify for partial tax exemption. Any amount paid toward the purchase price by the Veterans Administration directly to the seller may be excluded from the measure subject to tax. The amount paid by the disabled veteran is taxable.

The documentation furnished by the Veterans Administration parallels that of purchases by the U.S. Government.~~, and in~~ In addition, ~~requires~~ the selling dealer is required to show the Veterans Administration as the actual purchaser on the sales invoice to the extent that payment is made by the Veterans Administration.~~certify that the vehicle involved was actually sold to the claimant.~~ The vehicle is registered in the purchaser's name and all other documents reflect the disabled veteran as the purchaser.

Verification of the validity of the deduction is readily made by examination of the customer folder.

FEDERAL EXCISE TAX 0608.15

The federal retail excise tax imposed on the retail sale of heavy trucks and trailers is excluded from the measure of California sales and use tax. The federal tax ~~is~~ imposed on the retail sale of such vehicles ~~and~~ is therefore not part of the sales price subject to tax whether or not separately stated.

GOVERNMENTAL AGENCIES 0608.20

Sales tax does not apply to sales to:

- The United States or its unincorporated agencies and instrumentalities.
- Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.
- The American National Red Cross, its chapters and branches.
- Incorporated federal instrumentalities not wholly owned by the United States, unless federal law permits taxing the instrumentality. Examples of incorporated federal instrumentalities exempt from tax are federal reserve banks, federal credit unions, federal land banks, and federal home loan banks.

Copies of government purchase orders or remittance advices should be retained to~~in~~ support ~~of~~ claimed exemptions.

FUEL SOLD OR CONSUMED IN NEW OR USED VEHICLES 0609.00

GENERAL 0609.05

Fuel placed into the fuel supply tanks of motor vehicles by manufacturers, importers, or dealers may be subject to California sales or use tax in whole or in part. The principles involved in the proper application of tax to fuel consumed or sold with a motor vehicle should be applied consistently at the manufacturer, importer, or dealer level.

FUEL SOLD WITH VEHICLES 0609.10

The fuel in the fuel tank of the vehicle at the time of sale is considered to be sold as part of the vehicle whether or not the charge for the fuel is separately stated. If the vehicle is sold at retail, sales tax applies to the selling price inclusive of the fuel. If the vehicle is sold for resale, the fuel is also considered to be sold for resale.

FUEL CONSUMED IN VEHICLES 0609.15

Fuel placed in the fuel tanks of vehicles by manufacturers, importers, or dealers and not sold with the vehicle is considered to be consumed and subject to tax. For example, fuel used by manufacturers or importers in testing, or preparing and loading vehicles for delivery, and fuel used by dealers for demonstration and personal or business use is subject to sales or use tax when consumed in California.

If fuel is purchased for resale, tax should be reported on the cost of the fuel not resold. If the fuel is purchased sales tax paid, a deduction for tax-paid purchases resold is in order measured by the cost of the fuel resold with vehicles. If fuel is purchased both for resale and sales tax paid, that which is purchased tax paid is considered to be consumed first, and that which is purchased for resale is considered to be sold first. If the fuel consumed exceeds the fuel purchased tax paid, tax should be reported on the cost of the excess. Conversely, if the fuel resold exceeds the fuel purchased for resale, a tax-paid purchases resold deduction is warranted on the cost of the excess.

FUEL USED IN DEMONSTRATORS 0609.20

Tax applies to all fuel used in the operation of motor vehicles. Amounts reported by dealers for personal or business use of demonstrators under the 1/40th or 1/60th formula pursuant to Regulation 1669.5 ~~(Appendix 1)~~ do not include the cost of fuel consumed in the vehicles while being used for such purposes.

SALES IN INTERSTATE AND FOREIGN COMMERCE 0610.00

GENERAL 0610.05

In verifying sales where delivery is claimed to have been made outside this State, it is usually necessary to review correspondence, factory delivery orders, acknowledgments, ~~Department of Motor Vehicles~~DMV Dealer Reports of Sale and other documents.

FACTORY DELIVERIES AT POINTS OUTSIDE THE STATE 0610.10

Where a dealer in this State makes a sale to a consumer at a point outside this State, the dealer must retain in his/her files the necessary data and documents to prove that the car was not sold for use or storage in this State. A substantial number of such sales are factory deliveries. When such sales are made, the California dealer requests the factory or dealer located in another state to deliver a car to:

(a) A consumer residing in this State, or

(b) A consumer residing in another State.

In (a), the California dealer must ordinarily collect use tax. This is particularly true in cases where the purchaser takes California license plates to be placed on the new car. ~~The Motor Vehicle Code restricts the issuance of plates to those cars which ordinarily are to be used in California. Consequently, i~~In the absence of evidence to the contrary, the fact that California plates were obtained will be regarded as proof that the car was purchased for use in this State. In (b), the California dealer should retain complete data concerning the transaction. Shipping or delivery orders and any other documents should be retained showing the purchaser's address, the point at which delivery was made, and indicating that the car was purchased for use outside of California.

INTERSTATE DELIVERIES FROM CALIFORNIA STOCKS 0610.15

Claimed interstate sales from a dealer's California stock usually fall into one of the following categories:

(a) Delivery to a carrier for shipment out-of-state

(b) Delivery out-of-state by dealer's employee or agent

(c) Delivery in-state to an out-of-state purchaser or purchaser's agent

(d) Delivery out-of~~in~~-state to a known~~the out-of-state purchaser's agent~~ California resident

Under (a), the sale is exempt if delivery is made to a carrier, consigned to an out-of-state point, and actually shipped to the-out-of-state point. The dealer should retain a copy of the bill of lading to support the deduction and evidence of customer's out-of-state address. The auditor should ascertain who delivered the unit to the carrier, and that the vehicle was not in the possession of the purchaser or the purchaser's agent in this State at any time before the shipment. Even if the vehicle is delivered outside California, a dealer must collect use tax if the buyer purchased the vehicle for use in this state.

Customer is liable for use tax for vehicle used in California if:

A vehicle is purchased outside of California, and the first functional use of the vehicle is in California.

OR

The vehicle's *first* functional use is outside of California, but the vehicle is brought into the state within 90 days after its purchase (exclusive of any time for shipment or storage for shipment to California), and during the six-month period immediately following its entry into this state, one-half or more of the miles traveled by the vehicle are not miles traveled in interstate commerce, or the vehicle is not used or stored outside of California one-half or more of that time. Examples of what constitutes interstate commerce are described in Regulation 1620(b)(3).

Situations under (b) arise when a dealer is requested to make delivery in a neighboring state. *The transaction is not taxable if the car is actually delivered by an employee acting as agent of the dealer, or by some other individual acting as agent of the dealer.* The fact that the person delivering is in fact the agent of the dealer must be clearly established in each case. Affidavits, reimbursement by the dealer for expenses, or payment of a fee by the dealer are usually sufficient supporting evidence. *In the absence of evidence to the contrary, such a sale cannot be held exempt from tax if California license plates are secured for the delivered car.* The fact that the purchaser accompanied the dealer's agent who~~or assisted in~~ drives~~ing~~ the vehicle to an out-of-state location does not negate the exemption if the purchaser does not exercise control over the driver or the vehicle. *See Section 0610.45 for information on sales to military personnel.*

Form BOE-448 (see exhibit 1), "Statement of Delivery Outside California," can be used when the vehicle is driven or transported to an out-of-state point by the dealer or his/her authorized agent, with the purchaser taking delivery outside California. The use of this form is not necessary if the dealer ships the vehicle to an out of state destination by means of a common carrier auto transporter. In this situation, the bill of lading or other shipping documentation will support the fact that delivery was made outside of California as discussed in (a).

Under (c), ~~and (d)~~ delivery to a consumer or his/her agent in this State is a taxable transaction regardless of the evidence that the car was driven or shipped out-of-state by the purchaser or ~~his~~purchaser's representative, Law Section 6009.1 exemption is not applicable since this is a sales tax transaction (see 0635.35). Cars in this situation are usually driven out-of-state on one-trip permits or on plates of another state. The auditor must be alert to deliveries to the purchaser's agent where the dealer holds out that the person is the dealer's agent through affidavit or payment of expenses. The person cannot act in a dual capacity as agent of both buyer and seller.

Under (d), Law Section 6247 creates a presumption that when a dealer delivers a vehicle outside California to a known California resident, it is being sold for use in this state. The purchaser is considered a California resident, for example, if he or she has a California driver's license, or has a California address, even though the purchaser lives in the state only seasonally or intermittently.

Form BOE-447 (see exhibit 2), "Statement Pursuant to Section 6247 of the California Sales and Use Tax Law," is intended to relieve the retailer of any liability to collect the use tax from purchasers who are to be permanent, seasonal, or intermittent residents of California. This statement should be taken at the time of sale, and the original document retained in the retailer's records. This document is needed only when the purchaser has a California address and/or a California driver's license.

The use of the BOE-447 or BOE-448 is not mandatory. The dealer can still document and support an exempt sale by means of other satisfactory evidence, such as receipts for meals, lodging, fuel and transportation, and/or statements by the delivering and receiving parties. If these forms are properly and fully completed and notarized, the auditor may accept them as the evidence of an out-of-state delivery.

BAILEE CLAUSE 0610.20

The auditor may encounter sales by a dealer who has been instructed by ~~his~~the customer to ship or deliver a vehicle to a third person, usually a body builder within the State, as bailee. The customer's purchase order will include instructions not to charge sales tax as the vehicle is to be shipped out-of-state. A "Bailee Clause" may appear on the order.

The mere inclusion of a "Bailee Clause" on an order from a purchaser does not exempt the sale as a sale in interstate commerce. The auditor must determine, if the sale is to be exempt, that the shipment out-of-state by the bailee is properly done in accordance with instructions from the dealer and not the customer. *If the "bailee" is the customer's agent, an exempt sale has not been made.*

ONE-TRIP PERMITS 0610.25

California dealers sell automobiles to non-residents as well as residents, (leasing companies, contractors, and retailers) who intend to register and use the vehicles in another state. When a vehicle is sold for registration out-of-state, the dealer must complete the Report of Sale in full and mark the original "For registration out of state." The purchasers are allowed to transport their cars on their own wheels outside this State without obtaining California plates by securing a "one-trip permit" from the ~~Department of Motor Vehicles~~DMV or are required to obtain registration in his or her state before the vehicle is moved on the highway. Even though a one-trip permit is secured in place of registration, this does not relieve dealers of their sales tax liability. Vehicles sold and delivered in California are subject to tax.

Section 4003 (a) of the Vehicle Code provides that a one-trip permit "may be issued by the Department for operating a vehicle while being moved or operated unladen for one continuous trip from a place within this State to another place either within or without this State, or from a place without this State to a place within this State.".~~.~~

Section 4003 also allows the issuance of a quantity of these permits in booklet form upon payment of the proper fee for each permit contained in the booklet. Each permit shall be valid for only one vehicle and for only one continuous trip, and only after a copy describing the vehicle has been forwarded to ~~the~~ DMV~~department~~. There is no restriction as to whom they are issued. Dealers can and do secure them in their own name; however, in those instances where cars are driven from the dealer's place of business to a point outside this State, it will be presumed that title passed to and delivery was taken by the purchaser in this State, for the reason that the dealer would ordinarily use his/her dealer's plates if the dealer drove the unit across the State line. Dealers may overcome this presumption if they are able to furnish documentary evidence that pursuant to the contract of sale the car was delivered to the purchaser outside the State. The dealer is responsible for the completion and submission of a Statement of Facts (Reg 256) explaining how the vehicle was moved. No smog certification is required. Dealer plates may not be used by the customer to take the vehicle out of state.

FOREIGN PURCHASERS 0610.30

Sales of automobiles to foreign purchasers for shipment abroad and delivered by the dealer to a ship furnished by the purchaser for the purpose of carrying the property abroad and actually carried in a continuous journey to a foreign destination, title and control of the automobile passing to the foreign purchaser upon delivery, are exempt sales in foreign commerce.

Copies of import documents of a foreign country or other documentary evidence of export must be obtained and retained by the dealer to support the deduction.

The auditor should also ascertain by whom the automobile was delivered to the dock or ship, and also that the unit was not delivered to the foreign purchaser in the State, returned to the dealer and then delivered to the dock by the dealer. The auditor should look for a dock receipt and a bill of lading in the deal folder. The dock receipt or other similar documentation is verification that the dealer delivered the vehicle from his/her place of business to the dock for shipment. The bill of lading or other documentary evidence is verification that the vehicle was shipped from the dock (port) to an out-of-state or foreign destination.

If delivery was made to the purchaser any time after the sale, or if the purchaser or his agent drove the automobile to the dock, ~~the~~ sales tax applies.

Operative January 1, 1990, a new, noncommercial motor vehicle manufactured in the U.S. and sold to a resident of a foreign country who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the U.S. is exempt from tax if:

1. the purchaser is issued an in-transit permit by DMV pursuant to section 6700.1 of the Vehicle Code, and
2. prior to or at the end of 30 consecutive days from the first day of operation under the in-transit permit, the motor vehicle is delivered or shipped to a point outside the U.S. by the retailer, by means of :
   a) facilities operated by the retailer, or
   b) a carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property or arranging for its export.

Pursuant to Regulation 1610(b)(2)(D), the evidence of export of vehicles that are driven to a foreign country by employees of the retailer include employees' expense claims, fuel purchase receipts, and motel receipts. Auditors should examine a copy of the 30 day In-Transit Permit and a copy of the purchase order from the foreign authorized dealer. Evidence of support for export by other than the retailers' facilities include bills of lading and import documents of a foreign country.

COMMON CARRIERS 0610.35

The term "common carrier" means any person who engages in the business of transporting persons or property for hire or compensation and who offers these services indiscriminately to the public or to some portion of the public.

The sale of vehicles to common carriers is exempt from sales tax pursuant to Law Section 6385(a) when such property is:

1) Shipped by the seller via the facilities of the purchasing carrier under a bill of lading, to an out-of-state point, and

2) Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and

3) Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and

4) Used by the carrier in the conduct of its business as a common carrier

A dealer claiming an exemption from sales tax under Law Section 6385(a) must receive at the time of the transaction, and retain, a properly executed bill of lading (or copy) pursuant to which the goods are shipped. The bill of lading must show the seller as consignor. It must indicate that the described goods are consigned to the common carrier at a specified destination outside California. Where the form of the transaction is "freight collect," no specific freight charge need be shown on the bill of lading, since such charges are not ordinarily shown on "freight collect" transactions. Furthermore, the carrier need not actually collect freight charges from itself. The form and language of the bill of lading should be similar to the form and language normally used where the purchaser and carrier are not the same. A bill of lading will be considered obtained at the time of the transaction if it is received either before the seller bills the purchaser for the property, within the seller's normal billing and payment cycle, or upon delivery of the property to the purchaser.

Additionally, the seller must obtain from the purchaser prior to or at the time of the transaction, and retain, a certificate in writing that the property shall be transported and used in the manner described above and in Regulation 1621, Sales to Common Carriers. The certificate shall be in substantially the same form as Certificate A or B that appears in Regulation 1621.

In certain rare situations, the purchase of vehicles may be exempt from use tax under Regulations 1620 and 1621. See Section 0610.15 for transactions involving interstate commerce.~~For example, where vehicles purchased by public carriers for use in interstate or foreign commerce in California are actually placed in use in interstate or foreign commerce prior to entry into this State and are thereafter used continuously in interstate or foreign commerce.~~

Similarly, use tax does not apply where vehicles purchased for use in other states or foreign countries are shipped to this State and remain here temporarily pending reshipment to such other states or foreign countries and are actually used solely outside this State (Law Section 6009.1). If a vehicle purchased outside the State is assigned to interstate or intrastate use in this State, the question of whether it had been substantially used outside California before entry into this State or used in interstate commerce (so that use tax would not apply) arises and must be fully examined and commented upon by field auditors for submission to ~~h~~Headquarters.

~~DELIVERY TO A CONSUMER IN CALIFORNIA FROM A POINT OUTSIDE THIS STATE~~ ~~0610.40~~

~~While it seldom happens that a dealer in this State causes a car to be delivered directly from the factory to a consumer in this State in interstate commerce, such transactions do occasionally occur, particularly with respect to special factory-built jobs, high-priced trucks, fire fighting vehicles, etc. Where the ordinary rules of interstate commerce have been observed and the contract of sale specifies that the unit shall be delivered in interstate commerce, the sale is subject to use tax, and the dealer is responsible for the collection and payment of the use tax to the State.~~

MILITARY PERSONNEL 0610.40~~5~~

Sales of vehicles in California to military personnel are subject to sales tax regardless of the service member~~man~~'s place of residence. The dealer must also collect use tax on the sale of vehicles outside this state to service members~~servicemen~~ for use in this state, unless the sale is made prior to the effective date of ~~his~~ discharge, and the~~his~~ intention to use the vehicle in California results from official orders transferring the service member~~him~~ to California and not from his/her own independent determination. ~~With respect to purchases made prior to January 1, 1977, the serviceman will be considered to have made his own independent determination to use the vehicle in California if he contracts to purchase the vehicle after he has received official orders transferring him to California. With respect to purchases made on and after January 1, 1977, the~~ Service members~~serviceman~~ will be considered to have made their~~his~~ own independent determination to use the vehicle in California, without regard to the time of receipt of official orders transferring them~~him~~ to California, if at the time they contract~~s~~ to purchase the vehicle they ~~he~~ arrange~~s~~ to take receipt of the vehicle in California.

OVERSEAS DELIVERIES 0610.45~~0~~

Sales to military personnel and overseas government employees claimed to be in ~~I~~interstate or foreign ~~C~~commerce often present problems of documentation. The purchasers ~~involved~~ travel on government orders and ~~are~~ authorize~~d~~ shipping space for automobiles either to accompany them or to follow at a later date. The shipping involved is either a vessel operated by Military Sea Transport Service (MSTS) or a vessel under contract with MSTS. The purchaser or purchaser's~~his~~ agent will furnish the dealer with data for shipment and indicate the government facility to which the unit is to be delivered. All documentation prepared by the government indicates the purchaser as consignor and consignee. The documents consist of either a government bill of lading or automobile delivery receipt or both. Errors often arise in these documents by failure to show the party delivering to the government dock. More experienced dealers prepare their own delivery receipts and have the receiving authority sign for the vehicle. Auditors must be alert to vehicles accompanying the purchaser on the same vessel, since there is the tendency to give possession to the purchaser, and allow the purchaser~~him~~ to deliver the vehicle to the government facility ~~himself~~.

FOREIGN GOVERNMENTS, CONSULS, AND CONSULATES 0610.650

Sales tax generally applies to sales to foreign governments. Howevergovernments, including sales to consulates general, consular agencies, and other consular posts.

However, sales tax does not apply to sales of vehicles by California dealers to foreign career consular officers, employees, and members of their families if those persons have been granted immunity from tax according to treaties or other diplomatic agreements with the United States.and certain career consular employees employed in the administrative or technical service of a consular post are not subject to the California sales or use tax if (1) the country which the person represents is one covered by a treaty providing for an exemption from the California sales and use tax, (2) the purchaser is acting in a capacity which entitles him or her to an exemption, (service staff employees and honorary consular officers are not eligible for an exemption), (3) the purchaser is not a citizen of the United States or a resident alien, and (4) the purchaser is properly identified as to name and his official consular capacity.

The U.S. State Department, Office of Foreign Missions (OFM), issues "Tax Exemption Cards" to foreign diplomatic personnel who are exempt from sales tax. The cards include a photograph and a description of the authorized bearer and specify either that all transactions or only transactions that exceed a stated amount (threshold level) are exempt. Some cards limit the bearer to official purchases only and do not apply to personal purchases.

The seller must prepare an invoice or other written evidence of the sale and attach a photocopy of the front and back of the card, the number of the exemption card, and the exemption threshold level specified on the card to support this type sale as exempt. The seller may also request additional identification from the buyer, such as a U.S. State Department driver's license or diplomatic identification card.

Vehicles may be purchased exempt from tax by foreign consular officers who do not hold a Tax Exemption Card if an identification letter is furnished directly to the retailer by OFM. The letter must be provided to the retailer at the time of the sale and must include the following information: the name of the purchaser, confirmation of his or her tax-immune status, an identification number, and the date of assumption of duties by the diplomat seeking the exemption.

The Board of Equalization will issue a press-numbered Sales and Use Tax Exemption Card, Form BT-469, for purposes of identification, to all consular officers, employees and members of their families who qualify for the exemption.

LABOR AND REPAIR OPERATIONS 0611.00

GENERAL 0611.05

The composition of Labor and Internal Sales deduction varies between dealers. Some dealers lump both type sales together as a single deduction, while others state them separately. In some cases, the deduction is used as a catch-all for a combination of deductions. Due to the variations employed, it is necessary to inspect the sales tax working papers to determine the taxpayer's method and consistency in handling these types of transactions.

TESTS OF LABOR DEDUCTIONS 0611.10

No inflexible rule can be established for testing repair orders. ~~One inherent difficulty is that posting copies of repair orders are filed in numerical sequence while posting of detail to the daily sales summary is by date. Another problem occurs in larger shops when the floor men are assigned books of blank orders from different numerical series. It is not uncommon, therefore, to hove several series of numbers used on the same date, or to have one series of fifty numbers spanning a period of a month.~~

The volume of the service department, availability of repair orders, prior audit findings, and experience of the auditor all relate~~d~~ to the time needed~~involved~~ to determine~~make a test dictate~~ the extent of testing~~, if any, to be made~~.

BILLINGS BASED ON ESTIMATES 0611.15

Some dealers will prepare estimates on larger repair jobs, and invariably prepare detailed estimates for insurance companies. Usually, an itemized bid will show separately the price of labor, sublet labor, parts and tax reimbursement measured by the sales price of the parts. The bid may be given to either the customer (vehicle owner) or to the insurer.

Tangible personal property used in the actual repair work may differ from what was estimated when the bid was made. In such instances, some dealers enter the sales price of the property actually furnished in their books of account and report sales tax measured by that price.

An amount represented as the sales price of parts in an accepted bid is the taxable measure required to be reported by the repairer~~man~~ unless there is a subsequent modification of the bid agreement and the customer or the insurer is informed of the change;~~,~~ provided, however, that the sales price of the parts is not less than the cost of the parts actually used. The bid agreement may be modified by an invoice or a priced repair order given to the customer or the insurer showing the sales price of the property actually furnished by the repairer~~man~~. If a bid is so modified and the customer or insurer is notified of the change, the amount represented as the sales price of the parts on the modified bid is the amount upon which tax must be reported.

When the accepted bid is in writing, the subsequent modification to the bid agreement must also be in writing. The customer or the insurer should be notified of such modification prior to completion of the sale (e.g., delivery of the repaired automobile).

SUBLET REPAIRS (OUTSIDE WORK) 0611.20

The sublet repairs account is essentially made up of any repair work or servicing that cannot be performed at the dealer's facilities. The charge of the outside repairerman is debited to Sublet Repairs (Inventory Account), and the billing to the customer on the repair order is credited to Sublet Repairs. The extent of sublets will vary from dealer to dealer with the size of the service facilities being the governing factor. The larger dealers will have facilities for the majority of servicing operations and consequently sublet only specialized work. The problem ofor the dealer is the segregation of parts and labor on the billings from the subrepairermanan, and the subsequent breakdown of the sale between parts and labor. A large portion of the sublet purchases are solely service or labor, e.g. body repair, painting, carwash.

Examination of the purchase journal and disbursements journal will disclose the subrepairersmen who perform the majority of outside work, and the subsequent examination of purchase invoices of those vendors will disclose the existence of parts billings and the manner in which the dealer recorded the parts. If necessary, the auditor should then examine the repair orders for the proper segregation of partsales.

FABRICATION LABOR AND SPECIAL PAINTING 0611.25

An unusual source of posting to a labor account is from the New Car or Truck Journal. These postings originate as the result of sales of new vehicles on which special work is performed. While dealers may consider the charges to be repair or installation labor, the charges are for fabrication labor on the sale of a finished product and thus taxable. The fabrication labor charge for labor is posted to a labor account and may be improperly included in the labor deduction.

The charges most commonly made are for porcelainize, underseal, and special paint jobs. Examination of new car journals and scrutiny of posting references to the labor accounts normally will disclose the existence of these transactions. Less common are repair orders, prepared simultaneously with the new car invoice, on which charges for fabrication labor are made.

VEHICLE ENGINE EXCHANGES 0611.30

It is common practice among motor vehicle dealers to exchange reconditioned engines for worn engines. "Engine" as used here includes an entire engine, a short block, and a short, short block:

(a) An entire vehicle engine has a head and pan, but does not necessarily have a fuel pump, carburetor, distributors, etc.

(b) A short block is an engine cylinder block without cylinder head(s) or heads.

(c) A short, short block is an engine cylinder block without cylinder head(s) or heads and without oil pan and oil pump.

The exchange of a reconditioned vehicle engine for a worn engine, together with the removal of the worn and installation of the reconditioned engine in a vehicle, constitutes an integral transaction, and tax applies to the total charge for making the exchange without deduction on account of charges for removal of the worn or installation of the reconditioned engine, or without addition on account of the value of the worn engine accepted in exchange.; provided, however Also, that if due to the defective condition of the worn engine, an additional amount is charged to the customer, tax applies to such additional charge.

If the dealer makes an accurate segregation of the charges for the labor of removing the old and installing the reconditioned engine, and bills such charges separately, the dealer may compute his/her tax upon the amount separately charged for the reconditioned engine, provided such charge includes the fair retail value of the old engine removed from the customer's vehicle.

If the dealer replaces a worn engine with a new engine, the measure of tax is the full selling price of the new engine including the trade-in value of the old engine removed from the customer's vehicle and retained by the dealer.

If the dealer rebuilds (overhauls) the customer's own engine, the transaction is treated as a regular repair job.

Some dealers also exchange engines where no installation by the dealer is involved. The measure of tax when a new engine is sold "over-the-counter" must include the trade-in value of the old engine taken in exchange. If the dealer makes an "over-the-counter" exchange of a reconditioned engine, the transaction is governed by paragraph (b)(4) of Regulation 1546 and the measure of tax is the exchange price.

REPAIR~~USED AND RECONDITIONED~~ PARTS 0611.35

When a repair part is sold at a reduced price because of a trade-in allowance or core deposit, the amount subject to tax will depend on whether a new, used, reconditioned or rebuilt part is sold. It will also depend on whether there is a discount given. ~~When a used part is sold and a trade-in is involved, the tax is due on the full sales price of the used part including the value of the trade-in.~~

New and Used Parts

New or used parts are generally taxed on the total selling price less any discounts allowed. Tax applies to the price *before* any allowance for trade-ins (a reduction in price given to a customer for turning in an old part). For example, a new battery is sold for $35, and a trade-in allowance of $3 is given. Tax applies to $35, not the buyer's out-of-pocket cost of $32. Similarly, a used engine is sold for $450 and a $25 trade-in allowance for the buyer's old engine is given. Tax applies still to the $450.

Its important to note that some retailers call trade-in allowances "core" charges or deposits. Regardless of the name, the allowance is included in the taxable selling price unless a rebuilt or reconditioned part is sold as explained below.

(Cont.) 0611.35

Reconditioned or Rebuilt Parts

When a reconditioned or rebuilt part is sold~~,~~ and a customer's worn part is taken as an exchange, tax applies to the exchange price. The exchange price is the total amount received for the sale. For example, a rebuilt alternator is sold for $125, and the customer is required to turn in his or her old alternator. The customer is charged $125 if the used alternator is turned in at the time the rebuilt alternator is sold. Tax applies to $125. However, if the customer does not turn in the old alternator at the time the rebuilt alternator is sold, a core deposit of $15 is charged for a total $140 selling price (the $15 may or may not be separately stated). If the customer later returns an old alternator, the $15 core deposit should be refunded to the customer. In this case, the core deposit is not taxable, and the customer should be refunded the amount of sales tax collected on the core deposit. If the customer does not return an old alternator, the $15 core deposit is retained. Tax applies to the core deposit retained if the customer does not return the old alternator (tax on $140).~~tax applies to the amount charged by the repairman or reconditioner for the reconditioned property.~~

Discounts

A discount given to the customer is not subject to sales or use tax. For example, if an engine is sold (whether new or rebuilt) for $800 less a 10 percent discount of $80 so that the total amount received for the sale is $720 ($800-$80), tax is due on $720. However, if the engine is sold for $720 and a manufacturer's coupon (or rebate) is accepted for $80, then tax is due on the $800 received for the sale: $720 from the customer and $80 from the manufacturer.

LUMP SUM REPAIRS 0611.40

The Business and Professions Code requires automobile repairers to prepare detailed estimates and invoices for their customers on all repair jobs except minor repairs of the type customarily performed by gasoline service stations. Sections 9884.8 and 9884.9 of this Code provides:

Section 9884.8

> All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, such invoice shall clearly state that fact. One copy shall be given to the customer and one copy shall be retained by the automotive repair dealer.

Section 9884.9

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer which shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. …Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

(b) The automotive repair dealer shall include with the written estimated price a statement of any automotive repair service which, if required to be done, will be done by someone other than the dealer or his employees. No service shall be done by other than the dealer or his employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any such service in the same manner as if he or his employees had done the service.

The Department of Consumer Affairs, Bureau of Automotive Repair, licenses automotive repairers and administers these sections of the Code.

Most dealers comply fully with these provisions and have devised work orders which serve as both a written estimate and an itemized invoice.

(Cont.) 0611.40

Some dealers may advertise a set charge for certain major repair jobs, with the price inclusive of tax. The segregation of charges on such jobs is usually based on an experience factor. The amount of parts sales reflected by the posting segregation must be at the fair retail value. In those cases where tax reimbursement is shown on the invoice, the taxable measure will be in accordance with Regulation 1700, Reimbursement for Sales Tax, unless the measure so computed is less than the fair retail price of the parts.

TIRE RECYCLING FEES 0611.42

Effective July 1, 1990, the California Tire Recycling Act imposed a $0.25 per tire disposal fee on every person that left a tire for disposal with the seller of new or used tires. The $0.25 fee imposed on a purchaser of a new tire was not part of the retailer's taxable gross receipts from the sale of that tire. If an amount in excess of $0.25 was charged on the sale of a new tire, the excess amount was taxable. If no tire was left and a tire recycling fee was charged on the purchase of a new tire, the entire amount was taxable. If the customer did not purchase a new tire but left tires to be disposed, the fee imposed by the retailer was not taxable even if it exceeds $0.25.

Effective January 1, 1997, the California Tire Recycling Act was amended to impose the $0.25 fee on every person purchasing a new tire regardless of whether an old tire is left for disposal. Again, the $0.25 fee is not subject to tax, but an amount charged in excess of this fee is subject to tax.

OIL RECYCLING, HAZARDOUS WASTE AND OTHER OVERHEAD FEES 0611.43

The California Oil Recycling Enhancement Act, effective January 1, 1992, provides that oil manufactures must pay a fee of $0.04 per quart or $0.16 per gallon for the first sale in California of lubricating oil and transmission or differential fluids. If the products are purchased from a California supplier, the supplier will pay the fee. If the products are imported from outside California, the dealer will be responsible to pay the fee directly to the state. The dealer can pass the fee along to the customer. Charges for reimbursement of the Oil Recycling Fee are subject to tax even if separately stated on the invoice.

Car dealers are generally required to pay hazardous waste fees, for the handling, management and disposal of waste products such as transmission fluid, antifreeze, motor oil, and oil filters, which can be passed along to the customer. Separately stated charges for these fees are not subject to tax if they are directly related to the non-taxable servicing or repair of a customer's vehicle. Charges for Hazardous Waste Fees are generally taxable if made in conjunction with taxable work performed on the vehicle.

If the dealer separately states a general overhead charge which does not relate solely to non-taxable labor or solely to the taxable sale, the charge must be prorated in the same ratio as the itemized taxable charges for parts bears to the itemized non-taxable charges for labor.

CREDIT TO EXPENSE ACCOUNTS 0611.45

Credits to expense accounts for sales recorded in the sales journal are discussed in Section 0604.40. In some instances, credits are found in the Parts, Accessories, and Service Journal. The amount charged on individual repair orders is small and the total amount per month is not substantial. These are estimated amounts for nuts, bolts, washers, etc., which because of negligible unit costs, are not controlled in the cost system.

Examination of the general ledger accounts and Service Journal will disclose the accounts involved~~,~~; and examination of repair orders will determine if tax reimbursement was charged~~effected~~.

MODIFICATIONS TO VEHICLES USED BY PHYSICALLY HANDICAPPED PERSONS 0611.50

~~Beginning January 1, 1979, T~~tax does not apply to the sale, installation, storage, use or other consumption, in California of materials that: (1) are used to modify a vehicle so that a person with disabilities can operate it *and* (2) are incorporated into, attached to, or installed on the vehicle~~for a physically handicapped person~~, regardless of whether the property is installed by the retailer or another person. Sales of tools and materials that are used to modify the vehicle, but which are not incorporated into, attached to, or installed on the vehicle, are subject to tax.

The following definitions apply to this exemption:

- Persons with disabilities include disabled persons who qualify for special parking privileges (as described in Vehicle Code Section 5007).
- The term "vehicle" as used in this section refers to:

  All devices that qualify as vehicles under the Vehicle Code Sections 670, including, but not limited to automobiles, vans, trucks, mobile homes, and trailercoaches,

  Vehicles that are (1) owned or operated by physically handicapped persons, or (2) used in the public or private transportation of handicapped persons and which would otherwise qualify for a distinguishing license plate if they were registered to a physically handicapped person(s) (as described in Vehicle Code Section 5007).

BAD DEBTS AND REPOSSESSION LOSSES 0612.00

Deductions for accounts found to be worthless and for losses resulting from repossessions are proper if there has been compliance with the requirements of ~~sales tax~~ Regulation 1641, Credit Sales and Repossessions, and Regulation 1642, Bad Debts.

Bad debts charged off for income tax purposes, or if the retailer is not required to file income tax returns charged off in accordance with generally accepted accounting principles, usually will be greater than amounts allowable as a deduction for sales tax purposes. They will include labor, sales tax, ~~cartage,~~ resales, interstate sales, etc.

If the taxpayer has not claimed repossession losses, or has claimed the entire book loss, the taxpayer should be asked to schedule each loss in accordance with Regulation 1642. Where the repossessions are voluminous, or the back-up data is not readily available, the deduction may be computed on a test basis, and the results of the test applied to recorded amounts. The dealer should be required to compile the test data. The deduction should not be computed by applying a percentage which is estimated, unsupported, or based on audits of other dealers.

The auditor should verify that recoveries of bad debts previously claimed or allowed by the auditor are included in the reported taxable measure.

Amounts the taxpayer received from collection agencies may~~will~~ not include the total recoveries since collection agencies may withhold their fee. The amount retained by the collection agency should be added to the recorded recoveries, as it is an expense of collection and not exempt from tax.

THE LEMON LAW 0613.00

GENERAL 0613.05

The California Lemon Law provides an arbitration process for resolving disputes between manufactures and consumers of new motor vehicles purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law either to replace the motor vehicle or reimburse the consumer for the purchase price. The manufacturer may reduce the purchase price by an amount attributable to the value of the use made before the defect was discovered.

Initially, refunds of sales tax by the manufacturer for defective vehicles were not refunded by the Board because refunds or replacements did not qualify as credits for returned merchandise. Effective January 1, 1988, Civil Code Sections 1793.2 and 1794 were amended and Section 1793.25 was added to the Civil Code requiring the Board to reimburse the manufacturer of new motor vehicles for an amount equal to the sales tax which the manufacturer included in making monetary restitution or vehicle replacement to the buyer. Revenue and Taxation Code Section 7102 was amended to allow refunds pursuant to Civil Code Section 1793.25. In 1992, Civil Code Section 1793.22 was added to include consumer protection provisions related to defective vehicles. These sections are commonly known as the California "Lemon Law."

DEFINITIONS 0613.10

For purposes of the Lemon Law, the term "manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch. "New motor vehicle" means a new passenger or commercial motor vehicle which is bought primarily for personal, family or household purposes. Effective January 1, 1993, the term "new motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but excludes any portion designed, used, or maintained primarily for human habitation. Dealer owned vehicles, demonstrators, and other motor vehicles sold with a manufacturer's new car warranty are included under the Lemon Law.

The following is a list of vehicles that do not qualify under the Lemon Law:

1. Motorcycle.
2. Motor vehicle not registered under Vehicle Code because it is operated or used exclusively off the highways.
3. Vehicles purchased for commercial use or vehicles purchased primarily (more than 50% of the time) for business purposes.
4. Vehicle purchased out-of-state.
5. Used vehicles not sold with a manufacturer's new car warranty.

GENERAL PROVISIONS 0613.15

Section 1793.2 of the Civil Code provides that should a manufacturer be unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle or promptly make restitution to the buyer. The buyer is free to elect restitution in lieu of a replacement vehicle, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

Arbitration is not required before the Board is authorized to make a refund as long the specified requirements in the Civil Code are satisfied.

When the buyer chooses to have a vehicle replaced, the new vehicle is considered a replacement under warranty, and additional tax reimbursement is the amount the customer pays in excess of the credit received. If the value of the replacement is less than the credit allowed, the customer must be refunded the difference plus applicable sales tax reimbursement.

When the customer chooses restitution, the manufacturer must pay the actual price paid or payable by the buyer, including any sales tax reimbursement, license fees, registration fees, and other fees, plus any incidental damages to which the buyer is entitled. The manufacturer may deduct for usage of the defective vehicle and any amount charged for non-manufacturer items installed by the dealer. These amounts must be deducted from the original vehicle selling price before calculating the sale tax refund.

The buyer is liable for use of the defective vehicle prior to the time the buyer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The buyer's usage is computed by multiplying the total sales price of the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles used by the buyer up to the first nonconformity.

Example 1. Sales Tax on Vehicle Replacement Upgrades.

Replacement Vehicle Price (MSRP) = $15,981.00.

Replaced Vehicle Price including manufacturer installed options only (MSRP) = $13,187.

Replaced Vehicle price excluding sales tax reimbursement, doc fee, license fee, dealer installed options and optional service contract fee (from sales contract) = $12,773.00

Miles driven prior to first nonconformity = 5,907 miles.

The first step is to compute the usage allowance

The usage factor = 5,907 miles/120,000 = .05

The next step is to compute the usage allowance by applying the usage factor to the cash price of the vehicle exclusive of sales tax reimbursement, doc fee, licensing fee, dealer installed options and optional service contract fee. The usage allowance is .05 x $12,773 = $638.65.

The sales tax is computed as follows:

Replacement Vehicle Price =		$15,981.00
Replaced Vehicle Price =	$13,187.00	
Usage allowance =	-638.65	
Credit for Replaced Vehicle =		$12,548.35
Amount in Excess of Credit =		$ 3,432.65
Sales Tax Due @ 8.25% =		$ 283.19

Note: The credit for the replaced vehicle is based on MSRP, and the replacement vehicle should also be based on MSRP.

Example 2. Sales Tax on Vehicle Replacement Downgrades.

Replacement Vehicle Price (MSRP) = 16,671.00

Replaced Vehicle Price including manufacturer installed options only (MSRP) = 20,707.00

Replaced Vehicle price excluding sales tax, doc fee, license fee, dealer installed options and optional service contract fee (from sales contract) = 19,208.00

Miles driven prior to first nonconformity = 1,105 miles.

Usage Factor = 1,105/120,000 = .01

Usage allowance = .01 x $19,208.00 = $192.08

Sales tax refund is computed as follows:

Replacement Vehicle Price =		$16,671.00
Replaced Vehicle Price =	$20,707.00	
Usage allowance =	-192.08	
Credit for Replaced Vehicle =		$20,514.92
Refund to customer =		$ 3,843.92
Sales Tax refund @ 8.25% =		$ 317.12

DOCUMENTATION REQUIREMENTS 0613.20

Civil Code Sections 1793.23 and 1793.24 were added to expand consumer protection related to subsequent sales of vehicles reacquired by manufacturers, dealers, or lienholders. Section 1793.23 provides that prior to any sale, lease, or transfer of a vehicle reacquired under the Lemon Law, the manufacturer shall:

1. cause the vehicle to be retitled in the name of the manufacturer,
2. request ~~the DMV~~DMV to inscribe the ownership certificate with the notation "Lemon Law Buyback," and
3. affix a decal to the vehicle identifying it as a "Lemon Law Buyback."

These sections also provides that prior to sales made of a Lemon Law Buyback vehicle, the transferee must be given a disclosure statement signed by the transferee which states, "This Vehicle Was Repurchased By Its Manufacturer Due To A Defect In The Vehicle Pursuant To Consumer Warranty Laws. The Title To This Vehicle Has Been Permanently Branded With The Notation 'Lemon Law Buyback'."

All claims for refund of sales tax by the manufacturer paid on or after January 1, 1988 should be forwarded to the Refund Section and include a statement that the refund to the customer was made in accordance with Civil Code Section 1793.2. The claim must include an explanation of how the refund was calculated, including settlement agreements and odometer statements, along with proof that the retailer of the motor vehicle reported and paid sales tax on that vehicle. A statement from the selling dealer that sales tax was reported on the original sale of the vehicle will be accepted as adequate proof. In addition, the following documents should also be provided in support of the refund claim:

1. A copy of the original sales agreement for the reacquired vehicle,
2. A copy of the replacement vehicle sales agreement (if applicable),
3. Documentation supporting that a reasonable number of attempts have been made to repair the vehicle,
4. A statement from the buyer verifying they were given the choice of restitution or replacement, and verifying ~~their~~his/her election that a substantially similar or upgraded vehicle was accepted (if applicable),
5. Copy of documents to support the amount refunded to the buyer and/or any financing entity holding title (e.g., check(s) issued),
6. The sales tax permit number of the original retailer,
7. Copies of arbitration documents (if applicable),
8. Beginning January 1, 1996, a copy of the branded registration card of the reacquired vehicle,
9. Copies of refund computation worksheets, and
10. A copy of the repair history to support mileage amount when the vehicle was first reported for the nonconformity.

Manufacturers are not entitled to a refund of sales tax from the Board where restitution was made prior to January 1, 1988.

DEALER PARTICIPATION IN REPLACEMENT 0613.25

Typically, an automobile manufacturer sells its new motor vehicles to a dealership which, in turn, resells the vehicle to retail buyers. The automobile manufacturer may designate a dealership to act as its agent to repair or replace vehicles under the manufacturer's warranties applicable to the vehicles sold. A dealership may, in turn, designate another dealership to repair or replace vehicles under the manufacturer's warranty. Dealers may become involved in one or both of the approaches listed below.

Mandatory Warranty Provisions

When a buyer chooses vehicle replacement, the new vehicle is considered to be a replacement under a mandatory warranty, and the tax liability of the participating dealer is measured by the sales price in excess of the credit received. If the sales price of the replacement vehicle is less than the original vehicle, the customer must be refunded the difference including applicable sales tax reimbursement. If the sales price of the replacement vehicle and the original vehicle are the same, there is no tax adjustment. Finally, if the sales price of the replacement vehicle is greater than the original vehicle, the dealership would owe tax on the difference in sales price between the original vehicle and the replacement vehicle. License, registration and other non-taxable fees included in the credit given for the original vehicle are not to be deducted from the price of the new vehicle when calculating the amount subject to tax.

Thus, when dealerships adhere to these provisions, the manufacturers would only be allowed to file claims for refund when the sales price of a replacement vehicle is less than the original vehicle and the customer has been refunded the difference, including applicable sales tax reimbursement.

Alternative Method

Notwithstanding the above mandatory warranty provisions, a number of vehicle dealers currently treat replacement transactions as separate and distinct from the original transaction. Thus, the full selling price of the replacement vehicle is treated as taxable. Under these circumstances, manufacturers typically provide a credit to the buyer toward the purchase of the replacement vehicle from a dealership. The credit is most often noted directly on the sales contract of the replacement vehicle. Manufacturers are allowed to file claims for refund of sales tax included in the credit allowed for the original vehicle on the replacement transaction. Under this approach, a replacement vehicle furnished by the dealership will be considered by the Board to be a separate sale to the buyer and sales tax will be applicable to the full selling price of that vehicle. The dealership must report and remit the full sales tax applicable to the Board at the time that the replacement vehicle is furnished.

Vehicle dealers involved in the above situations should retain documentation on file supporting these transactions. The same documentation that is required to support a claim for refund filed by the manufacturer should be retained in the dealer's records in support of these transactions. This would include documentation received from the manufacturer instructing the dealer to replace the vehicle in accordance with Section 1793.2 of the California Civil Code and calculation of the amount of credit allowed.

If the dealership makes restitution to the buyer or replaces a vehicle without the participation of the manufacturer, the transaction is not subject to California's Lemon Law and is controlled by applicable provisions of California's Sales and Use Tax Law (e.g., Regulation 1655).

DISTRICT RESPONSIBILITY 0613.30

In cases where refunds have been issued to vehicle manufacturers, to ensure that a duplicate credit (deduction) is not taken by dealerships, districts are advised to view the appropriate Appeals Subsystem screen(s) for the vehicle dealership under audit, and/or the related account(s), prior to completing field investigations.

For all claims received in Headquarters, the Appeals Subsystem will include the vehicle identification number (VIN), customer name, period in which vehicle was originally purchased, and amount of tax refunded to the manufacturer or a zero if the claim was denied. This detail can be found under the Appeals Case Maintenance screens (APL PR and APL MH). Upon entering the APL MH screen, function key F20 can be used to view the VIN. Function key F11 (if available) provides access to the customer name. Please note that there are some cases where data converted from the old system does not include all of the above detail regarding Lemon Law refunds issued.

AUDITOR'S RESPONSIBILITY 0613.35

In audits of dealerships, it will be the field auditor's responsibility to verify that transactions in which the dealer participated qualify under the Lemon Law. During an audit investigation, auditors may become involved in any of the situations listed below.

Vehicle Replacements

1. Manufacturer warranty provisions - Manufacturers are allowed, through their dealerships to offset the sales tax due on a replacement vehicle with the tax that had been remitted on the original vehicle sale. Accordingly, during the course of an audit, auditors should verify that tax was properly reported on the original sale. No further tax will be due on the transaction unless the sales price of the replacement vehicle exceeds the sales price of the original vehicle. In such case, auditors should verify that tax is properly reported on the net difference in value.

   In instances where the sales price of the replacement vehicle is less than the sales price of the original vehicle, manufacturers may file a claim for refund for sales tax measured by the net difference in the sales price of the two vehicles provided this difference and the tax was refunded to the buyer. The dealership should not reflect these types of transactions on ~~their~~his/her sales and use tax returns.

   If the Appeals Subsystem (APL MH) screen indicates that a claim for refund was filed and or granted to the manufacturer on any of the above types of transactions, auditors are asked to immediately forward all pertinent documentation related to these transactions directly to the Headquarters Refund Section for investigation. This is to ensure that no duplicate refunds are issued.

2. Alternative Replacement Method – When manufacturers, through their dealers, treat vehicle replacements as separate and distinct transactions from the sale of the original vehicle, auditors should verify that tax was reported on the full selling price of both the original vehicle and the replacement transaction. Under these circumstances, manufacturers may file claims for refund with the Board for sales tax included in the credit provided to the buyer on the replacement vehicle. No subsequent deduction is allowable on the dealer's sales and use tax returns for this transaction.

Restitution

A vehicle dealer may not claim a deduction for transactions when vehicle manufacturers provide customers with full restitution. The manufacturer will file a claim for refund directly with the Headquarters' Refund Section. Accordingly, any such deduction claimed by dealers on their sales and use tax returns should be disallowed.

If during the course of an audit of a motor vehicle dealer the auditor discovers evidence that the transaction was not handled by the manufacturer in accordance with the Lemon Law, an informational memo (BOE-1164 or 1032) should be prepared for inclusion in the manufacturer's file and a copy should be forwarded to the Headquarters' Refund Section.

USED CAR DEALERS 0614.00

GENERAL 0614.05

The majority of the subject matter in the preceding sections pertains to new car dealer's operations. While the new car dealer will have a used car department, and that operation is confined to used car sales, the accounting procedures and controls inherent in the cost accounting system cause the new car dealer's operation to be considerably different from an auditing standpoint. Since most used car dealers do not repair customer cars after the customer's purchase, there is normally no service department. However, many dealers maintain a mechanic or have reconditioning facilities to prepare newly acquired vehicles for resale. Many of the sections already discussed will apply in their entirety to a used car dealer's operations.

INITIAL INTERVIEW 0614.07

The initial interview is crucial to the audit process, and the auditor should ask certain specific industry related questions. The auditor should determine the method of reporting, whether the owner keeps a personal record or list of his or her profits on each vehicle or deal, and what records are maintained that list or summarize the business transactions. The auditor should determine if any sales or purchases are made at auctions, if there are sales to wholesalers and consignment sales, the source of purchases of vehicles, and if there are any in-house dealer financing sales or third party financing sales. The specific bank accounts where sales are deposited should be identified along with expenses paid out in cash. The auditor should determine whether the dealer and family members own a car or whether they drive cars off the lot.

USED CAR DEALER'S RECORDS 0614.10

Although some~~many~~ used car dealers will employ a double entry system and exert excellent control of purchases inventories and expenses, most~~some~~ use a single entry system with varying degrees of control.

A common means of control in used car dealer's records are car envelopes and inventory books. In all instances, the certificated used car dealer will be issued Used Vehicle~~Dealer's~~ Report of Sale Books by ~~Department of Motor Vehicles~~DMV.

Those dealers selling late model used cars will in most cases have flooring loans on purchases and sell on conditional sales contracts with recourse.

CAR ENVELOPES 0614.15

The majority of used car dealers will utilize car envelopes (also referred to as a car jacket, customer file or deal jacket) rather than the customer folders used by new car dealers. Cars purchased are normally assigned an inventory number with a car envelope prepared for the unit. Details of purchase and sale are placed on the appropriate lines on the printed face of the envelope,~~:~~ and all documents of purchase, reconditioning and sale are inserted in the envelope.

Car envelopes are sometimes the only records maintained or available~~,~~; and reporting~~s~~ for sales tax is~~are~~ based on tapes prepared from car envelope data. In such cases, the auditor's verification should consist of the sequence and completeness of inventory numbering, a test of contents of the car envelopes, reconciliation with ~~Department of Motor Vehicles~~DMV Dealer's Reports of Sale and correctness of reporting~~s~~.

To account for all the vehicles purchased, it is necessary for the auditor to recognize the various sources of purchases. Dealers acquire cars from trade-ins on sale of used vehicles, purchases of used cars from individuals, other new and used car dealers, or wholesale or retail auctions.

Source of revenue in addition to sales from the lot include consignment sale (see Section 0605.20) of vehicles by individuals and dealers, and sale at auctions.

AUCTIONS 0614.17

Dealers use auctions to buy and sell cars at wholesale and retail auctions. Wholesale auctions permit only dealers to buy or sell, while retail auctions are open to the general public as well. Each auction is run independently, maintain different records, and has its own procedures. Some standard auction procedures may include:

- Every dealer must register with the auction.
- The dealer will provide the auction with the year, make, VIN, and equipment of each vehicle offered for sale.
- The auction will issue the selling dealer an auction check, and assume the risk of collection on the buyer's check.
- The auction will handle the actual assignment of title to the buyer and collect and report the sales tax.
- Seller may set a floor or lowest price that the car may be sold for by the auction.
- Each party will receive an invoice that shows the vehicle sold, and the identities of the buyer and seller.

Some dealers purchase large amounts of vehicles from auctions, and the auditor should contact these auctions to obtain a print out of vehicles purchased. Some dealers may bring a customer to a wholesale auction, in violation of auction policy, and collect an auction fee for their service. The auction sells the car to the dealer for resale and the dealer gives the paperwork to the customer with instructions to register the vehicle at ~~the DMV~~DMV. The vehicle is not entered in the car dealer's inventory or sales records. The auditor needs to be alert for these transactions as the correct amount of tax may not get reported by the buyer.

INVENTORY BOOKS 0614.20

Some dealers will record all purchases in an inventory book and employ this book as a combination purchase and sales journal. Detail of source of purchase, date, description and cost are entered reflecting the purchase. The date of sale, name of customer, and selling price are recorded at the time of sale.

The lag in time that exists on some sales is a major difficulty in this type of accounting. The dealer may omit sales of units purchased in quarters prior to the period of sale. Dealers' Reports of Sale should be tested extensively in these audits to determine completeness of sales records.

Auditors should ask the taxpayer or representative how sales were recorded and if any credit sales were made. Auditors should also review the available records to determine recurring payments from individuals. Such recurring payments should be traced to the original sale to determine if the sale was properly recorded and reported. Other sources of unreported sales are:

- Not recording a trade-in on a sale, then selling the trade-in for cash. The dealer keeps the cash and the title shows a direct sale from customer A to customer B with no indication that the dealer was ever involved in the trade.
- Analysis of bank deposits and canceled checks may show unidentified cash deposits or reconditioning costs incurred but not allocated to vehicles.
- Not reporting the sale of all cars purchased. Comparing the purchase of vehicles acquired by trade and at auctions to a subsequent sale of the vehicle can determine the accuracy of recorded sales.
- Purchasing packaged cars, allocating the full cost of the package to only some of the units, then selling one or more units off the books. A review of purchase documents may provide evidence of the number of cars purchased. Packaged purchases are often made from other dealers or auctions.
- Many dealers engaged in "Buy Here/Pay Here" operations may repossess the same vehicle several times before it is ultimately sold. The dealer reports the sale on the first repossession, but not on subsequent repossessions.

DEALER~~'~~S' REPORTS OF SALE 0614.25

The only record common to all used car dealers is the Report of Sale Book. Use of the books to determine the completeness of the recorded sales is standard procedure. The extent of examination of reports of sales ~~is~~ depend~~s~~ent on size of operation, class of merchandise, and type of formal records maintained.

It should be noted that preparation of R~~r~~eport of ~~s~~Sale requires the remittance of license or transfer fee. The remittance is usually made along with Form 247, which contains information regarding ~~r~~Report of ~~s~~Sale number, or license number, and amount of license or fees remitted. If the auditor suspects that all books have not been made available, an examination of the duplicate copies of Form 247 retained by the dealer is a ready source for comparison.

The auditor should examine voided Reports of Sale carefully. Although these may be legitimate voids, they could represent sales made without corresponding entry in the sales records.

FLOORING AND FINANCE COMPANY RECORDS 0614.30

Dealers who sell late-model used cars often enter into flooring loans on purchases. In audits of dealers with sparse records, or if the auditor suspects that incomplete data has~~ve~~ been furnished, examination of flooring contracts or financing agreements in the hands of the dealer or located at the lending institution is a means of verification.

A dealer financing his or her own sales (Buy Here/Pay Here Lot) will generally collect on the notes either on periodic payments or by selling the note at a discount. A dealer self-financing a sale will customarily keep a financing file which should be examined for leads of unrecorded sales of vehicles.

KELLEY BLUE BOOKS 0614.35

Often, the auditor will establish unrecorded sales through audit procedures discussed in the above sections, with the establishment of reasonable selling prices the only unresolved factor. The most common reference guide is the Kelley Blue Book.~~, and~~ The use of the suggested selling prices ~~there~~in the Kelley Blue Book eliminates arbitrary or unfounded prices. The Kelley Blue Book serves only as the starting point, and adjustments must be made for the actual condition of the car, since the Blue Book assumes an average condition. Factors to consider in adjusting the Blue Book price include actual wear and tear on the car, mileage, accessories, any hidden damage such as frame damage, etc.

AUDIT PROCEDURES - USED CAR DEALER 0614.37

The following audit steps are recommended for audits of used car dealers and should be used as applicable to the particular audit situation:

- Contact DMV to obtain total number of DMV Report of Sale Books along with the corresponding book serial numbers issued to the dealer (See Section 0604.35).
- If available, analyze prior period gross profit percentage and compare to current audit period percentages. Large fluctuations may require further investigation and explanation.
- If the audit is performed at the accountant's office, visit the business location, checking for additional income sources such as body shop or garage for repair work, level of business activity, lot size, other items for sale such as boats, recreational vehicles, motorcycles, campers, etc. Used car dealers may not restrict themselves to accepting only cars as trade-ins.
- Reconcile recorded sales to reported sales.
- If a general ledger exists, scan for unusual entries such as debits to sales, credits to cost of goods sold, and cash over/under accounts.
- If accounting records are nonexistent or incomplete, indirect methods (Section 0406.00) may be employed. Taxpayer's lifestyle may not be supported by the net income reported on the Federal Income Tax Return.
- A representative number of sales contracts should be examined for accurate computation of sales tax and traced to sales records. Special attention should be given to doc fees and smog fees paid to the seller.
- Account for all report of sales books and depending on the size of the dealership, trace to sales records on an actual basis or test basis.

- Review statements of checking, savings and other business accounts for the audit period. It may be necessary to obtain personal account information as well as the business accounts. Reconcile banks statement deposits to reported sales. Adjustments will be needed for sales tax and registration fees included in deposited amounts. Another adjustment may be necessary if the dealer has a line of credit with a local bank or deposits personal money to cover periods of cash shortfall. Cash paid-out needs to be added back prior to comparing to reported sales.
- If financing is available, check the financing file to verify the sales price listed in the sales records and to determine if the sale was recorded in the first place.
- Determine if cars are sold on consignment and if the sales are properly reported (Section 0605.20).
- Determine accuracy of recorded purchases and contact vendors if necessary. Trace a representative amount of vehicle purchases from source documents to sales records or inventory.
- Determine if the owners and family members drive cars off the lot and if merchandise, such as parts, is withdrawn for personal use. Review the odometer statements (especially on expensive cars), comparing the mileage when dealer purchased the vehicle to the mileage when the vehicle was sold. Large differences may indicate unrecorded personal use. Also, examine vehicles remaining in inventory for extended periods. This may indicate personal use.
- If a general ledger is not available, scan depreciation schedule for fixed asset purchases.
- Secure all car jackets pertaining to repossessions and examine the original sales documents for correct repo loss computations.
- Exempt sales test to be performed as outlined in the earlier sections.

USED CAR WHOLESALERS 0614.40

One unique type of used car operation ~~that is unique~~ is that of ~~the~~ used car wholesalers. They are usually located in the metropolitan areas and sell to dealers within a radius of 200-300 miles. The majority of their sales are to used car dealers, but some retail sales are made. The sources of purchase vary but the bulk of cars are procured from large dealers, leasing companies, fleet users, and out-of-state wholesalers. The operation is based on quick turnover at small margin of profit ($25-$50 per unit). While this type of operation usually requires detailed records, volume alone is the cause of errors. Since retail sales are usually few in number, by comparison with total units sold, it is desirable to trace all sales per Dealer Report of Sale Books to the recorded taxable sales. The most common sources of errors, however, are the lack of supporting resale certificates, and incomplete wholesale car orders which incorporate the resale certificate. A detailed examination of claimed resales with special emphasis on "one-shot" sales is often in order.

REQUESTS FOR DMV INFORMATION FROM CONSUMER USE TAX SECTION 0614.45

The Consumer Use Tax Section (CUTS) may be contacted to resolve disputes between the audit staff and the taxpayer as to whether the use tax was paid to DMV by a taxpayer on a purchase of a vehicle or undocumented vessel.

CUTS has on-line access to DMV vehicle/undocumented vessel registration and use tax payment information. The basic record is referred to as an R67 inquiry and contains a description of the vehicle/undocumented vessel, registration card and ownership certificate issue dates, and name and address of the registered owner. Several subrecords can be found in this basic record including **Sub:B** which may indicate whether use tax was paid. The code "1" is used to indicate use tax was paid and "2" to indicate that no use tax was paid.

Additional information may be available such as Registration Receipt, Certificate of Title (pink slip), Bill of Sale, Statement of Fact, Power of Attorney, and other documents provided to ~~the DMV~~DMV upon registration.

Auditors requesting DMV registration or use tax payment information should send their requests to CUTS with as many of the following as possible:

1. Date of sale.
2. Purchaser name and address.
3. Complete Vehicle Identification Number (VIN) or Vessel Hull Number.
4. Make and model.
5. License plate, registration or CF number.

Auditors can send their audit worksheets with the above information and leave enough space next to each entry for CUTS to respond on the same document. Due to the potential volume of requests, these requests should not be made on a routine basis.[NS79]

Occasionally, a field auditor will find that a seller under audit will have an existing CUTS determination. When determinations have been issued, these determinations or demand billings cannot be routinely canceled. If there is a discrepancy in the amount of determination, the auditor should advise CUTS by memorandum of the proper measure upon which the billing should be based. The key exception is if the transaction is subject to sales tax. The CUTS staff should be contacted to resolve the issue.

In instances where a determination has not been issued, CUTS staff will provide the auditor with information so that the account may be properly audited.

TRUCK MANUFACTURERS 0615.00

GENERAL 0615.05

Several major truck manufacturers maintain factory branches within the ~~S~~state. These act as both distributors and dealers. Their records do not conform with any of those described in the preceding sections, nor do their methods of reporting sales tax liability follow any set pattern.

Sales made by the branch, other in-state branches, out-of-state branches, the home office, and the factory will be subject to sales tax in some cases and to use tax in other cases.

The auditor should be familiar~~ize himself~~ with the entity as to locations of factories, divisions, home office and permits. The auditor~~He~~ should also review the sales tax working papers in detail for inclusion of sales by other than the local branch. Discussion with branch manager, sales manager and other key personnel will give the auditor a better understanding of the audit problems that~~e~~ need to be~~will have to~~ solved. It is very possible that the audit will be or should be controlled by the Out-of-State District. As soon as it is determined that work is to be done out-of-state, the Out-of-State District should be notified. The auditor, in addition to covering the audit of recorded and/or reported liability, should review correspondence files, inter-branch and home office accounts and statements, internal billings and warranty charges to home office.

Audits of truck manufacturers should be quite detailed, since no one reporting period will prove typical of the operations of the retailer for the audit period.

The auditor should also be alert to the leasing operations of truck manufacturers. Leases should be carefully examined to determine the status of truck tractors, trailers, trucks, and dollies. (See Section 0620.15.)

MISCELLANEOUS 0616.00

CLEAN DEALS TEST 0616.~~2~~05

Reference has been made to dealers who fail to submit Dealer's Reports of Sale. It is often difficult to detect such practice but there are several ways in which this can be done depending upon the exact circumstances. The so-called "clean deals" test may be employed. This test simply consists of determining the percentage of clean deals (i.e., cases in which a purchaser buys a new car without trading in an old one) compared with the total car sales.

FORM B~~O~~E~~T~~-543, CLEAN DEAL QUESTIONNAIRE 0616.~~3~~10

Form B~~O~~E~~T~~-543, is a questionnaire directed to the purchaser of a vehicle. *Form B~~O~~E~~T~~-543 should be used with discretion and only in those instances where an audit supervisor feels that information obtained directly from motor vehicle purchasers might be of substantial value in ascertaining whether either a dealer or a sales~~man~~person has incurred unreported tax liability.* The letter is to be directed to selected purchasers and should, wherever possible, include~~show~~ a description of the car. It should be mailed with an addressed and stamped envelope and should bear the dealer's permit number (not name) for identification purposes. Only one copy needs to be prepared since a control record can be maintained by appropriate notations on working paper schedules. (See Exhibits ~~B~~ 3 and ~~C~~4).

SALES TAX REGULATIONS PERTAINING TO AUTOMOBILE DEALERS 0616.~~15~~40

1546	-	Installing~~Installation~~, Repairing, and Reconditioning in General
~~1547~~	~~-~~	~~Vehicle Engine Exchanges~~
1548	-	~~Tire~~ Retreading and Recapping Tires
1551	-	Repainting and Refinishing
1553	-	Miscellaneous Repair Operations
1566	-	Automobile Dealers and Salesmen
1569	-	~~Lienor and~~ Consignees and Lienors of Tangible Personal Property for Sale
1610	-	Vehicles, Vessels, and Aircraft
1619		Foreign Consuls
1620	-	Interstate and Foreign Commerce ~~Generally~~
1621		Sales to Common Carriers
1628	-	Transportation Charges
1641	-	Credit Sales and Repossessions
1642	-	Bad Debts
1654	-	Barter, Exchange, "Trade-i~~I~~ns" and Foreign Currency Transaction

1655	-	Returns, Defects and Replacements
1660	-	Leases of Tangible Personal Property - In General
1661	-	Leases of Mobile Transportation Equipment
1668		Resale Certificates
1669	-	Demonstration, Display~~,~~ and Use of Property Held for Resale - General
1669.5	-	Demonstration, Display, and Use of Property Held for Resale - Vehicles
1684	-	Collection of Use Tax by Retailers
1685	-	Payment of Tax by Purchasers
1700	-	Reimbursement for Sales Tax

SUGGESTED AUDIT PROGRAM - NEW CAR DEALER 0616.2045

Exhibit ~~A-~~5 outlines a suggested audit program for use in auditing new car dealers. It should be of considerable aid in setting up and following an audit program of the typical new car dealer. Parts of it may be adapted for audits of used car dealers.

EXAMINATION OF FACTORY WARRANTY ACCOUNTS 0616.250

California residents sometimes purchase automobiles from car dealers in neighboring states such as Oregon, Nevada and Arizona. They then license the vehicles out-of-state and return them for use in California without payment of the use tax. Auditors should examine factory warranty accounts of California dealers performing the warranty service on these vehicles as a means of securing information for use tax purposes.

LEASING 0617.00

GENERAL 0617.05

One of the principal factors in determining the application of tax to leases is the type of vehicles involved. A distinction must be made between passenger cars and vehicles defined in the law as "mobile transportation equipment.". Both types of vehicles are defined in the following sections. Regulations 1660 and 1661 cover the application of the tax to leases.

DEFINITIONS - VEHICLES OTHER THAN MOBILE TRANSPORTATION EQUIPMENT 0617.10

The following vehicles are not mobile transportation equipment (MTE) and are treated in the same manner as passenger cars for tax reporting purposes:

(a) Passenger Vehicles

Section 465 of the California Vehicle Code provides that a passenger vehicle is any motor vehicle, other than a motor truck or truck tractor, designed for carrying not more than 10 persons including the driver, and used or maintained for the transportation of persons., except that effective 1-1-77, any motor vehicle other than a motor truck or truck tractor, designed for carrying not more than 12 persons, including the driver, which is maintained and used in the nonprofit transportation of adults to and from a work location as part of a carpool program or when transporting only members of the household of the owner thereof shall be considered to be a passenger vehicle for the purposes of this section.

(b) Multi-Purpose Vehicles. Vehicles registered as multi-purpose vehicles such as Jeep, Bronco, Blazer, Land Rover, Land Cruiser, are not mobile transportation equipment.

~~(b)~~(c) House cars and motor homes.

~~(c)~~(d) Motorcycles.

~~(d)~~(e) Combination pickup and camper leased as a unit and registered with the ~~Department of Motor Vehicles~~DMV as a house car. If such vehicles are not registered as house cars they are regarded as ~~mobile transportation equipment~~ MTE.

~~(e)~~(f) Mini-buses or vans designed primarily for carrying persons, and limited in design to carrying not more than 10 persons including the driver, which are registered with DMV as passenger vehicles under the Vehicle Code. Those not so registered are regarded as MTE. ~~For exception, see Paragraph (a) above.~~

~~(f)~~(g) Fork-lift trucks.

~~(g)~~(h) Trailers and baggage containers designed for hauling by passenger vehicles.

~~(h)~~(i) One-Way Rental Trucks

These vehicles are motor trucks of a kind required to be registered under the Vehicle Code, with a manufacturer's gross vehicle weight rating not exceeding 24,000 pounds, which are principally employed by a person in the rental business in being leased out for short term periods of not more than thirty-one (31) days to individual customers for one-way or local hauling of personal property of the customers, and which upon acquisition~~,~~ or upon being employed in this state by the person, are identified to the Board as one-way rental trucks by reporting tax measured by rental receipts on a timely return for the first reporting period in which the truck is leased, and by maintaining records which can be verified by audit of the vehicles as to which such an election has been made.

Upon the leasing of such a truck to a customer, the lessor shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and shall make known to the customer any taxes which are payable measured by the rentals. Once a truck is identified to the Board as a one-way rental truck, the election may not be revoked with respect to that truck. However, failure of the lessor to make such a timely election will cause such vehicles to be classified as mobile transportation equipment.

APPLICATION OF TAX TO LEASES OTHER THAN OF MOBILE TRANSPORTATION EQUIPMENT 0617.15

The lease or rental of a vehicle not classified as mobile transportation equipment is a continuing sale and purchase during any period of time in which the vehicle is in this state unless tax or tax reimbursement has been paid timely measured by the purchase price of the vehicle and it is leased or rented in substantially the same form as acquired. If tax or tax reimbursement has not been so paid, and the lessor desires to pay tax measured by the purchase price, it must be reported and paid with the tax return for the period during which the property is first placed in rental service.

Leases or rentals which are continuing sales are subject to tax measured by the rental charges. Generally, the applicable tax is a use tax imposed upon the lessee which must be collected and paid to the state by the lessor when the ~~collects the~~ rental charges are collected. When the lessee is not subject to use tax (e.g., insurance companies, the United States or its instrumentalities), the sales tax applies. The sales tax is upon the lessor and is measured by rentals payable. ~~Leases to the United States or its instrumentalities became subject to sales tax effective January 1, 1979.~~

Also, sales tax does not apply to the following:

- Sales to the United State government or its unincorporated agencies and instrumentalities.
- Sales to any incorporated agency or instrumentality of the United States owned wholly either by the United States or by a corporation wholly owned by the United States.
- Sales to the American National Red Cross, its chapters and branches.

Sales of vehicles to federally chartered banks exempt from state taxation under federal law, such as federal reserve banks, are exempt from sales tax. (See Regulation 1567)

~~For periods prior to January 1, 1979, neither the sales tax nor the use tax applied if the lessee was the United States Government or one of its agencies or instrumentalities, unless federal law permitted the lessee to be taxed. Consequently, sales tax applies, before and after January 1, 1979, to leases to such organizations as national banks and federal savings and loan associations, which are permitted by federal law to be taxed; however, leases to such organizations as federal reserve banks, federal credit unions, and federal land banks, which are not so permitted, are exempt from tax prior to January 1, 1979, but subject to sales tax afterwards.~~

The timely payment of tax or tax reimbursement measured by the purchase price of the vehicle constitutes an irrevocable election not to pay tax measured by rental receipts. This election may not be changed by reporting tax on rental receipts and claiming a tax paid purchase resold deduction for the tax paid on the purchase price. When tax or tax reimbursement has been paid timely measured by the purchase price of the vehicle that is leased in same form as acquired, the lessor may not collect an amount from the lessee designated as tax or tax reimbursement. If tax reimbursement is improperly collected on rental receipts, it must be returned to the lessee or paid to the state to the extent that it exceeds the tax liability measured by the purchase price.

~~For periods prior to January 1, 1979, any amount so collected constitutes excess tax reimbursement and should be refunded to the lessee. If it is not refunded or credited to the lessee, it must be paid to the state.~~

~~For periods on and after January 1, 1979, T~~those amounts so collected by a lessor who is a retailer, which ~~are designated as the tax must be refunded to the lessee or paid to the state per Section 6204 of the law.~~

DEFINITIONS - MOBILE TRANSPORTATION EQUIPMENT 0617.20~~15~~

The following vehicles are classified as mobile transportation equipment:

(a) Trucks

(b) Buses

(c) Truck Tractors

(d) Truck Trailers

(e) Pickup trucks, including such vehicles as Ford, Nissan~~El Caminos, Rancheros, Datsun~~, and Toyota pickups, etc. Even though pickup trucks are often thought of as passenger vehicles, they are in fact mobile transportation equipment and must be treated as such for tax purposes.

(f) Vehicles designed for carrying more than 10 persons, including the driver, are regarded as mobile transportation equipment and not passenger vehicles.~~, except that effective 1-1-77, any motor vehicle other than a motor truck or truck tractor, designed for carrying not more than 12 persons, including the driver, which is maintained and used in the nonprofit transportation of adults to and from a work location as part of a carpool program or when transporting only members of the household of the owner thereof shall be considered to be a passenger vehicle.~~

(g) Panel trucks designed primarily for carrying property. Also, van equipped with a seat in the front only designed primarily for carrying property.

(h) Hearses

(i) Tangible personal property which is or becomes a component of mobile transportation equipment.

(j) Bogies

The term "bogie" means a vehicle consisting of an axle or axles with wheels and tires and a device mounted on its frame to support a container (van body) as an undercarriage. It acts as wheels for and in conjunction with the container (or van body). Bogies are specifically designed to couple under a container temporarily for highway use, being detachable when not required. Bogies may be designed and constructed to allow a sliding movement under a container (or van body) to several positions in order to adjust to the desired axle loading.

(k) Chassis

The term "chassis" means a frame with one or more axles designed to be used in conjunction with, and as a temporary support or undercarriage, for a container or other van-type box. The chassis and axle, or axles, may be designed and constructed to allow a sliding movement for extending the chassis to allow the carriage of various length bodies or to allow movement of one or more axles to any given position under the container. When operated as a semitrailer, the front portion of the container and chassis is attached to a motor vehicle or dolly.

(l) Dollies

The term "dolly" means a vehicle consisting of a tongue, fifth wheel, and axle equipped with wheels and tires to be connected to a semitrailer ~~so as~~ to support the front end of the semitrailer, including a portion of the cargo thereon, but which is not permanently attached to the semitrailer.

When coupled to the semitrailer by its fifth wheel (which is mounted on the frame) and to a trailer by the tongue, the semitrailer becomes in effect a "full" trailer. A dolly may also be designed and used as the third or rear axle of a two-axle tractor to act as an additional axle to support a portion of the weight of a towed semitrailer and any load thereon, thus reducing tractor axle loads. Pole, pipe, and logging dollies consist of a tongue, bolster and axle, or axles, equipped with wheels and tires. When connected to a motor vehicle by its tongue, or by the cargo, this type of dolly is used to transport long poles, timbers, logs, pipes or structural materials with the rear end of the cargo resting on the dolly bolster and the front end on the motor vehicle.

~~Prior to January 1, 1980, lessors and lessor-dealers of mobile transportation equipment who purchase the equipment with the intention of leasing it are the consumers of such equipment which they lease or rent to others. Generally, they are required to pay tax measured by the purchase price of such equipment and cannot issue a resale certificate for the mobile transportation equipment. Beginning January 1, 1980, both~~

APPLICATION OF TAX TO LEASES OF MOBILE TRANSPORTATION EQUIPMENT 0617.25

The sale of mobile transportation equipment to a lessor is a retail sale and the lessor is the consumer of the equipment. Accordingly, either the sale of the equipment to the lessor or its use in this state may be subject to tax. If the sale and delivery occur within California, the transaction is subject to sales tax unless the lessor makes a timely election to report his or her tax liability measured by the fair rental value. On the other hand, if the sale and delivery occur outside California and the property is purchased for use in California, use tax will apply measured by the purchase price, unless the equipment enters the state in interstate commerce and is used continuously thereafter in interstate commerce or the lessor makes a timely election to report use tax based on the fair rental value.

D~~d~~ealer and non-dealer lessors of mobile transportation equipment who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting their use tax liability based on fair rental value. This election must be made on or before the due date of the return for the period in which the equipment is first leased. The election must be made by reporting tax measured by the fair rental value on a timely return for that period. Tax must thereafter be paid with the return for each reporting period, and measured by the fair rental value whether the equipment is within or without this state. The election may not be revoked with respect to the equipment as to which it is made. Fair rental value is normally regarded as the rentals required by the lease (even though not paid), except where the Board determines the rental receipts are nominal~~amount received from the lessee~~. Tax on fair rental value does not apply either:

(a) for periods during which the equipment is not leased and is merely held for lease; or

(b) for periods after the lessor has formally demanded return of the equipment if the lessee wrongfully retains possession of the property and is not required to make rental payments under the lease.

~~A lessor of mobile transportation equipment should not collect an amount designated as tax or tax reimbursement from the lessee. This is true whether tax was paid on the purchase price of the equipment or the lessor elected to measure his use tax liability by fair rental value. Any tax so collected constitutes excess tax reimbursement and should be refunded to the lessee. For periods prior to January 1, 1979, if it is not refunded or credited to the lessee, it must be paid to the state. On and after January 1, 1979, amounts, which represent reimbursement for tax paid on the purchase price of the equipment, collected as "use tax" by a lessor who is a retailer must be refunded to the lessee or paid to the state per Section 6204 of the law. However, effective January 1, 1979, when a lessor of mobile transportation equipment elects to pay his use tax liability based on fair rental value, the lessor may separately state a charge to his lessee designated as use tax.~~

~~Beginning July 1, 1979, any separately stated amount collected from a lessee by a lessor electing to report use tax measured by fair rental value under the representation by the lessor that the amount is use tax imposed on the customer must be returned to the customer or paid to the board. A designation by the lessor of a separately stated amount as "use tax", without further explanation, will be regarded as a representation that the amount is use tax imposed on the customer.~~

Tax rate used for MTE leases (Regulation 1661(b)(2)(B):

1) The applicable rate is the rate in effect at the time the equipment is first leased.

2) The rate will remain the same for all periods during which the equipment is leased including;

- All periods during subsequent leases of the equipment.
- During any period in which the tax rate is increased or decreased.

If lessor of mobile transportation equipment purchases such equipment under a resale certificate and collects tax reimbursement on the rental receipts, but pays no tax to the state, the lessor must pay tax on the purchase price of the equipment since a timely election to measure the tax by fair rental value was not made. The tax reimbursement collected on rental receipts is excess tax reimbursement and must be returned to the lessee or paid to the state (see Regulation 1700 (b)(4) for offsets).

SPECIAL FACTORS WHEN TAX REPORTED ON RENTALS 0617.~~2~~30

When the tax liability is based on rental receipts, the following points must be considered for both~~whether the property leased is~~ mobile transportation equipment and~~or a~~ passenger vehicles.

(a) Registration of Vehicle

Leased vehicles must be registered as prescribed by Section 4453.5 of the California Vehicle Code in the name of either the lessor or the lessor/lessee jointly. If vehicles are registered in the name of the lessee only, tax liability may not be measured by rental receipts, and the transaction will be regarded as a retail sale subject to tax. (~~s~~See Section 0607.15).

(b) License Fees

The license fees paid to ~~the DMV~~DMV and included in a monthly lump sum charge made to lessees may be excluded from the rental charges subject to tax.

(c) Late Charges

Additional charges made by the lessor as a penalty for overdue rental payments are not a part of rental receipts subject to tax if they are reasonable charges for the cost of money or additional administrative expense.

(d) Interest Payments

Amounts designated by the lessor as interest, which the lessee must periodically pay along with amounts designated as rentals are part of rental receipts subject to tax.

(e) Deficiency Charges

Any deficiency amount the lessee is required to pay at the termination of a lease to satisfy the base rental must be included in rental receipts subject to tax. If the lessee is given credit for any amount paid in excess of the base rental such credit may be excluded from rental receipts subject to tax.

(f) Insurance Charges

Charges to the lessee for automobile insurance must be included in the rental charges subject to tax if the lessee is required to purchase the insurance from the lessor. However, if the lessee has an option to purchase the insurance from the lessor or an insurer of his or her own choice, the charges for the insurance, if separately stated, may be excluded from the rental charges subject to tax.

(g) Gasoline Furnished by the Lessor (Wet Rentals)

A "wet rental" is a lease of a vehicle in which the total rental charge includes gasoline furnished by the lessor. Whether the sale of the gasoline to the lessor is subject to sales or use tax depends on whether the lessor is the retailer or the consumer of the gasoline furnished.

When the lease of a vehicle is a continuing sale under the California Sales and Use Tax Law, the lessor is the retailer of gasoline furnished under wet rentals of the vehicles. Such gasoline may be purchased ex-tax under a resale certificate, and if sales or use tax is reported and paid on the total rental receipts no additional tax liability accrues.

When the lease of a vehicle is not a continuing sale because tax has been paid on the cost of the vehicle, or because the vehicle is mobile transportation equipment, the lessor is the consumer of gasoline furnished under a wet rental, and tax applies to the sale of the gasoline to the lessor. However, if the lessor makes a separate charge to the lessee for the gasoline, the lessor is the retailer of such gasoline and the retail sale of the gasoline is subject to sales tax. In that case, the lessor may purchase the gasoline ex-tax under a resale certificate. In the case, of a wet rental of mobile transportation equipment, where the lessor has properly elected to report his use tax liability measured by fair rental value, the use tax applies only to that portion of the rental charge attributable to the lease of the equipment.

(h) Up Front Costs or Drive Away Charges

"Up front costs" or "drive away" charges that are generally subject to tax include capitalized cost reductions, document preparation charges, bank fees, acquisition fee, and booking fees. At the close of the lease, tax applies to charges such as renegotiation fees, assumption fees, deferral fees, and excessive wear and use charges (for example, excessive mileage fees). Refundable security deposits are not taxable when received by the dealer at the inception of the lease (tax does apply to the fee if it is applied to a taxable amount owed on the lease, *when* it is applied). Title and registration fees are also specifically excluded from tax. While late charges for late payments of leases are not subject to tax, late charges for failing to return the vehicle timely are subject to tax as it is a charge for the use of the vehicle.

(Cont.) 0617.30

In virtually all retail motor vehicle lease transactions conducted by new and used motor vehicle dealers, the dealer is initially the owner of the leased vehicle and appears on the lease contract as the lessor. At the inception of the lease, the dealer generally collects from the lessee the first month's lease and various other "up front" charges. Sometime after initiating the lease contract, the dealer may assign the lease contract to a third party. The dealer is responsible for collecting and reporting tax on all taxable costs for which payment was received from the lessee. The party to whom the contract is assigned is responsible for collecting and reporting tax on all subsequent lease payments after the lease is assigned.

LOCAL USE TAX ALLOCATION ON LEASES OF MOTOR VEHICLES 0618.00

GENERAL 0618.05

Prior to January 1, 1996, use tax was reported by the lessor on Schedule B to the place of assumed use of the vehicle by the lessee. Generally, if the lease was short term (30 days or less), the local use tax was allocated to the business location of the lessor. If the lease was long term (over 30 days), the place of use was where the lessee resides and/or registers the vehicle. Effective January 1, 1996, pursuant to Law Section 7205.1, a long term lease is a lease with a term greater than four calendar months.

Additional changes occurred to Law Section 7205.1 on January 1, 1999. The following rules apply to leases entered into on or after January 1, 1999. For leases entered into prior to January 1, 1999, lessors should continue to allocate the local use tax as previously instructed (according to Special Notices sent to taxpayers on 11/95 or 3/97). As a general rule, the local use tax on the lease of a new motor vehicle should be allocated based upon the location of the dealer.

Effective January 1, 1999, Law Section 7205.1 was amended to specify the proper allocation of local use tax collected by "leasing companies." For the purposes of the allocation of the 1% local tax, a "leasing company" is a motor vehicle dealer (as defined in Vehicle Code Section 285) that meets all of the following criteria:

- They originate long-term lease contracts and elect to remit tax based on lease receipts.
- They do not sell or assign the long-term contracts that they originate.
- They have annual motor vehicle lease receipts of fifteen million dollars ($15,000,000) or more per location. This does not include capitalized cost reduction payments or amounts paid by a lessee to exercise an option.

Although a "leasing company" must be a motor vehicle dealer, these provisions generally apply to independent leasing companies that hold a dealer's license to sell used vehicles upon termination of a lease. At this time, there are fewer than ten companies in California that qualify as "leasing companies" for the purpose of allocating the 1% local use tax.

When a lessor is a California new motor vehicle dealer or a "leasing company" as previously defined, the place of use for reporting the local use tax is the city in which the lessor's place of business is located.

When the lessor is *not* a California new motor vehicle dealer or a "leasing company," there are two possible allocations of the 1% local use tax. When the lessor purchases the vehicle from a California new motor vehicle dealer or a "leasing company," the place of use for reporting the local use tax is the city in which the dealer from whom the lessor purchased the vehicle is located. When the lessor purchases the vehicle from another source, the local use tax shall be reported and distributed through the countywide pool of the county in which the lessee resides.

The place of use for determining the allocation of the 1% local use tax for vehicle lease agreements entered into on or after January 1, 1999 is summarized by the following chart:

(Cont.) 0618.05

Guidelines for Allocating the Local Use Tax Due on Leases of Motor Vehicles Effective January 1, 1999

Type of Lessor	Leases Exceeding 4 months	Leases for 4 months Or Less
	Allocate Local Tax To:	
California New Motor Vehicle Dealer		
Lease of a new or used motor vehicle* and MTE.	Lessor's sales location (Schedule F not needed)	Lessor's sales location (Schedule F not needed)
California "Leasing Company" (as defined)**		
Lease of new or used motor vehicle* and MTE.	Lessor's sales location (Schedule F not needed)	Lessor's sales location (Schedule F not needed)
California Lessor other than a New Motor Vehicle Dealer or "Leasing Company" (as defined)**		
Lease of a motor vehicle* purchased from a California new motor vehicle dealer or qualifying "leasing company."	California new motor vehicle dealer or "leasing company's" sales location (Schedule F)	Lessor's sales location (Schedule F not needed)
Lease of motor vehicle,* other than one purchased from a California new motor vehicle dealer or qualifying "leasing company."	Lessee's place of registration (Schedule B)	Lessor's sales location (Schedule F not needed)
Lease of MTE, other than a light duty pickup truck purchased from a California new motor vehicle dealer or qualifying "leasing company."	Lessor's sales location (Schedule F not needed)	Lessor's sales location (Schedule F not needed)
Out-of-State Lessor:		
Lease of motor vehicle* purchased from California new motor vehicle dealer, or qualifying "leasing company" (as defined).**	California new motor vehicle dealer or "leasing company's" sales location (Schedule F)	Lessee's place of registration (Schedule B)
Lease of motor vehicle* and MTE, other than one purchased from a California new motor vehicle dealer or qualifying "leasing company."	Lessee's place of registration (Schedule B)	Lessee's place of registration (Schedule B)

*Traditional passenger vehicle (designed to carry, including the driver, no more than 10 passengers), but not including any mobile transportation equipment except light duty pickup trucks.

** "Leasing company" is defined in Section 0618.00.

For leases allocated to a California dealer's sales/business location, the place of use for local use tax purposes remains the same for the duration of the contract, even though the lessor may sell the vehicle and assign the lease contract to a third party.

The provisions of Section 7205.1 do not apply to leases entered into on or before December 31, 1995. The local use tax on these leases continue to be allocated to Schedule B.

TRUCKS AND TRAILERS SOLD BY OUT-OF-STATE AND IN-STATE RETAILERS 0620.00

TRUCKS AND TRAILERS SOLD BY OUT-OF-STATE RETAILERS 0620.05

The sale of a new or remanufactured truck, truck tractor, trailer, or semi-trailer, any of which has an unladen weight of 6,000 pounds or more, new or remanufactured trailer coach, or new or remanufactured auxiliary dolly to the purchaser in California is exempt from sales and use tax when the vehicle is delivered to the purchaser in California by the manufacturer or remanufacturer pursuant to a retail sale by an out-of-state dealer and certain conditions provided by Section 6388 of the Revenue and Taxation Code are present. For the sale of the property to qualify under this exemption, the manufacturer or remanufacturer must secure from the purchaser and retain:

- Written evidence that the purchaser has registered the vehicle out-of-state.
- The purchaser's affidavit attesting that he or she is not a resident of California and that he or she purchased the vehicle from a dealer who is located outside California for use outside the state.
- The purchaser's affidavit that the vehicle was moved or driven to a point outside this state within 30 days of the date of delivery of the vehicle to the purchaser.

Please refer to Exhibit 6 for a sample "Affidavit for Section 6388 or 6388.5 Exemption."

~~Note: Effective January 1, 1984, the exemption was extended to include remanufactured vehicles.~~

TRAILERS SOLD FOR USE OUT-OF-STATE~~,~~ OR IN INTERSTATE OR FOREIGN COMMERCE 0620.10

Section 6388.5 of the Revenue and Taxation Code ~~also~~ exempts from sales and use tax a sale of a new or remanufactured trailer or semi-trailer which has an unladen weight of 6,000 pounds or more when the vehicle is for use exclusively outside California or exclusively in interstate or foreign commerce or both and is delivered to a purchaser in California by an out-of-state or California manufacturer, remanufacturer or dealer pursuant to a sale by an out-of-state or California dealer and certain other qualifying conditions provided by Section 6388.5 of the Revenue and Taxation Code are met.

To substantiate the Section 6388.5 exemption, the dealer, manufacturer, or remanufacturer making the sale must secure from the purchaser and retain:

- Written evidence of an out-of-state license and registration for the vehicle.
- The purchaser's affidavit attesting that the vehicle was purchased from a dealer at a specified location either in California or outside California for use exclusively outside this state, or for use exclusively in interstate or foreign commerce.
- The purchaser's affidavit that the vehicle was moved or driven to a point outside this state either within: (1) 30 days from the date of delivery of the vehicle to the purchaser in California if it was manufactured or remanufactured out-of-state, or (2) 75 days from the date of delivery providing the vehicle was manufactured or remanufactured in California.

Please refer to Exhibit 6 for a sample "Affidavit for Section 6388 or 6388.5 Exemption[SM90]."

~~Notes:~~

~~(1) Effective July 1, 1982, this exemption was extended to sales of trailers or semitrailers by dealers who are independent of the manufacturer. Also, the allowable qualifying time period for trailers and semi-trailers manufactured in California was extended from 30 days to 75 days.~~

~~(2) Effective September 21, 1982, the exemption was extended to trailers and semitrailers purchased for use in foreign commerce.~~

~~(3) Effective January 1, 1984, exceptions were extended to remanufactured vehicles.~~

TRUCKS AND TRAILERS SOLD TO LESSORS OF MOBILE TRANSPORTATION EQUIPMENT 0620.15

The sale~~All leases~~ of trucks and truck type trailers (excluding "one-way rental trucks" as defined in Section 6024) to lessors is the retail sale subject to tax, and the use of the MTE by the lessee is not subject to tax since the lessor is the consumer.~~are exempt from sales or use tax as leases of mobile transportation equipment.~~

~~Prior to January 1, 1980, lessors of mobile transportation equipment who purchase the equipment with the intention of leasing it are the consumers of such equipment which they lease or rent to others. Generally, they are required to pay tax measured by the purchase price of such equipment and cannot issue a resale certificate for the mobile transportation equipment. Beginning January 1, 1980, both~~ D~~d~~ealer and non-dealer lessors of mobile transportation equipment who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting their use tax liability based on fair rental value.

TRANSACTIONS (SALES) AND USE TAX 0625.00

(a) General.

Beginning January 1, 1988, if a vehicle, aircraft or undocumented vessel is licensed or registered in any district imposing the tax, the retailer is considered engaged in business in that district and is required to collect the use tax and pay it to the state.

(b) If the dealer is located in a special tax district and sells or leases a vehicle that will be registered in an area where there is no special district tax, the dealer is required to obtain a signed declaration from the purchaser indicating where the vehicle will be registered.

Delivery to a point outside the district shall be satisfied for purpose of the transaction (sales) tax as follows:

1) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-district address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, the principal place of residence, and

2) With respect to commercial vehicles by registration to a place of business outside the district and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

A sample declaration used for commercial vehicle is shown on Exhibit 7 and for noncommercial vehicles on Exhibit 8. Although the dealer is not required to use the sample declaration shown in these exhibits, any declaration used must contain the same information.

~~With respect to new vehicle sales, there are two DMV forms that contain the essential elements to satisfy the requirements of the declaration indicating where the vehicle will be registered; *Application for Registration of New Vehicle* (DMV Form Reg. 897) and *Application for Original Registration* (DMV Form Reg. 343). Both of these forms contain the buyer's address, which may be considered functionally equivalent to the purchaser's "principal" address and the required penalty of perjury statement signed by the purchaser. Therefore, even if the dealer fails to obtain a specific certificate of out-of-district delivery from the buyer, but completes either of these two DMV forms, no reallocation is required provided that the dealer has properly reported the transit district use tax based on the district of registration.~~

VESSEL DEALERS 0630.00

GENERAL 0630.05

Persons wishing to secure manufacturer or dealer vessel registration numbers, "dealers plates," from ~~the~~ ~~DMV~~DMV are required under Division 3.5 of the Vehicle Code to make application to DMV. Applicants for these "dealer plates" must complete DMV form BOAT 101A and indicate their Seller's Permit Number. "Dealer plates" are not issued for a specific vessel. The CF (vessel registration) number ends in DA to DZ for dealers and MA to MY for manufacturers. ~~The DMV~~DMV will check with the Consumer Use Tax Section (CUTS) to determine if the seller's permit is valid and that the person is regularly engaged in the sale of vessels. If the permit is not valid or the person does not appear to be engaged in the vessel business, the application will be returned advising the applicant to contact the nearest Board office to resolve the problem.

DEFINITION 0630.10

1) Vessel.

A vessel is defined in Section 6273, of the Sales and Use Tax Law, as any boat, ship, barge, craft, or floating thing designed for navigation in water except:

(a) A sea plane,

(b) A watercraft designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course as outlined in Section 6273,

(c) A watercraft designed to be propelled solely by oars or paddles,

(d) A watercraft of eight feet or less in length designed to be propelled by sail.

A motor or other component of a vessel, whether or not detachable, is considered part of the vessel when sold as part of the vessel.

2) Documented Vessel.

A documented vessel is a vessel documented by the United States Coast Guard and is issued a valid marine certificate. All commercial vessels of five net tons or more are required to be documented. Pleasure vessels meeting the size requirements may be documented at the owner's option. Vessel documentation is a world wide registration system in lieu of all other registration requirements. Documented vessels normally exceed thirty feet (30') in length and accordingly are mobile transportation equipment.

3) Undocumented Vessel.

Any vessel which is not required to have, and does not have, a valid marine certificate issued by the United States Coast Guard is an undocumented vessel. Under the Federal Boating Safety Act, an undocumented vessel must be registered in the state where principally used on the waters. ~~The DMV~~DMV registers undocumented vessels for the State of California as an agent of the Department of Boating and Waterways.

(Cont.) 0630.10

All undocumented vessels are issued a vessel registration number which must be displayed on the vessel. Registration numbers start with an abbreviation of the state such as CF for California, NV for Nevada, OR for Oregon and AZ for Arizona. All numbers read CFXXXXXX with the middle four numeric and the last two alpha characters. The following are examples of the registration number types when the last two alpha characters are as follows:

DA-DZ	Dealer
MA-MY	Manufacturer
LA, LB and LD	Livery (rental) boats and boats carrying paying passengers.
LC	Livery (rental) boats owned by a city or county.
MZ	Special use other than dealer or manufacturer.
XC	Boat of a city, county, district, or other municipality.
XF	Federal boats.
XS	State boats.
YB	Boats owned by certain youth groups.

4) Vessel Dealer.

A vessel dealer is a person required to hold a seller's permit by reason of the number, scope, and character of his or her sales of vessels.

5) Vessel Agent.

DMV, upon request, appoints agents to conduct registration of undocumented vessels. The official title of such agents is "Undocumented Vessel Registration Agent." Any licensed yacht and ship broker acting as an authorized agent of ~~the DMV~~DMV may collect and remit use tax on a vessel transfer when applicable.

SOURCE DATA 0630.15

The major sources of information on vessel transfers are the ~~Department of Motor Vehicles~~DMV and the U.S. Coast Guard. The Board has an interagency agreement with the ~~Department of Motor Vehicles~~DMV covering undocumented vessels. Quarterly the Board receives a CD-ROM containing the U.S. Coast Guard master registration file of documented vessels. The current data is compared to the data of the previous quarter to determine transfers in ownership of vessels documented with California addresses (which includes hailing ports and previous owners address and hailing port in California). Under the Foreign Registered Vessel and Aircraft Program (FRVAP), representatives of CUTS investigate records at some out-of-state offices to discover additional leads. Copies of documented vessel referrals are also forwarded to the appropriate County Assessor for property tax purposes.

APPLICATION OF TAX ON SALE AND PURCHASE OF VESSELS 0630.20

Every sale or purchase of a vessel is subject to either sales tax or use tax, unless specifically exempt. Every sale of a vessel is a sale at retail, and by definition, the seller is a retailer. Vessels 30 feet in length or more generally are mobile transportation equipment. Sales by the vessel dealer, unless specifically exempt, are subject to sales tax if made in California. Sales by all other permit holders or private parties, unless specifically exempt, are subject to use tax payable by the purchaser to DMV at the time of registration for undocumented vessels and directly to the Board for documented vessels.

AUDIT PROCEDURES 0630.25

For undocumented vessel sales, a vessel dealer will prepare a DMV form BOAT 110, "Vessel Dealer or Manufacturer's Sales Tax Certification" and Boat 101, "Application for Registration Number Certificate of Ownership and Certificate of Number for undocumented Vessel." The Boat 110 certificate contains information identifying the vessel, the purchaser, the dealer (including permit number), the selling price and sales tax, and a signed certification that the applicable taxes on the sale will be reported directly to the Board.

CUTS sorts by districts the completed forms and forwards the forms to the appropriate district office for further handling.

During an audit of a watercraft dealer or dealer/broker, the auditor shall prepare a BOE-379-B on all properly supported exempt sales of vessels sold for over $10,000 involving:

1. Yacht and Ship Brokered Transactions
2. Out-of-State Deliveries -The Three-Mile Limit (Law Section 6247)
3. Regulation 1594 Exemption Claims (commercial deep sea fishing, offshore drilling platform and interstate and foreign commerce)

However, the auditor should perform sufficient verification to ensure that no transactions are listed which are properly the liability of the taxpayer under audit, i.e., list only transactions which audit verification strongly suggests are the responsibility of the purchaser. CUTS account information is available through the system's Consumer Use Tax Maintenance Screen (CUT MA) and may aid in the resolution of these transactions.

For category 3 transactions, staff should be certain that the dealer has not in effect encouraged false certificates. If it can be established that the dealer knew the facts stated in the certificate were not true, the tax plus applicable interest and penalties should be assessed against the dealer. A dual determination against the purchaser might be justified in some situations.

All forms prepared on these transactions should contain as much information as possible but should include as a minimum: The name and address of purchaser; type of watercraft including make, size, and description; state of registry or documentation; place of delivery; selling price; and the basis upon which the transaction was claimed as exempt, e.g., brokerage, out-of-state delivery or Regulation 1594. A photocopy of the exemption certificate and invoice, if available, should be attached to the BOE-379-B.

Completed BOE-379-B's should be forwarded directly to CUTS. CUTS will correlate this data with any other available information and verify the claim.

COMMERCIAL DEEP SEA FISHING VESSELS 0630.30

Sales of vessels used in commercial deep sea fishing operations are not subject to tax provided that (1) more than 50 percent of the total use of the vessel during the first twelve months (after the first functional use) is in commercial deep sea fishing, (2) its principal use is outside the three-mile limit, and (3) gross receipts from commercial deep sea fishing operations total at least $20,000 in a selected 12-month period (as discussed below). See Regulation 1594.

NOTE: Although the Channel and Farallon Islands are not considered to be outside the three-mile limit, there is a stretch of water between the coast of California and these islands that qualifies as being outside the three-mile limit.

Sales of vessels may be exempt under Regulation 1594 provided that more than 50 percent of the total use during the test period is of an exempt nature. The exemption does not extend to the vessel trailer or a spotter plane. However, the exemption does include repair parts or tangible personal property becoming a component part of the exempt watercraft.

With respect to watercrafts sold on or after January 29, 1991, there is a rebuttable presumption that "persons who are regularly engaged in commercial deep sea fishing" do not include persons who have gross receipts from deep sea fishing operations inside or outside the territorial waters of this State totaling less than $20,000 in a 12-month period. (Please note: the 12-month $20,000 figure is used prospectively with the first functional use by a new commercial fisherman, but any consecutive 12-month period, including the first operational use of the vessel, may be used retroactively for a person regularly engaged in commercial fishing.) Vessel dealers making exempt sales of commercial deep sea fishing vessels must obtain a valid Watercraft Exemption Certificate (or similar document as shown in Regulation 1594) in order to claim the sale as nontaxable.

When a person secures a commercial fishing license, a book of fish receipts is issued so the person can give receipts to people who purchase the fish, other than wholesalers, and all landings must be reported to Fish and Game regardless of the fact they total less than 100 pounds. A separate license is required for the vessel. Though voluminous documentation is not mandatory to prove the major catch location, prudence should be exercised when considering the claim. The type of vessel and the location of its home port are good indicators and if necessary, the log of the vessel and/or the permit which must be obtained by the owner to sell fresh fish might be examined.

The kind of fish sold may be more indicative of the location of the vessel's use. For example, abalone dive boats generally stay within the three-mile limit, while albacore fishermen operate well beyond the three-mile limit. Form letter BOE-1105A is sent by CUTS to the taxpayer when a deep sea exemption is claimed. The letter lists all of the documentation needed to prove the sale of the vessel is exempt.

Additionally, there is a corresponding exemption from local property taxes with one significant difference: there is no three mile criteria. A check with the appropriate County Assessor may show they had already granted or denied the exemption.

Auditors need to verify that dealers making these types of exempt sales of vessels retain a completed Watercraft Exemption Certificate (Exhibit 10 and Regulation 1594).

YACHT AND SHIP BROKERS 0630.35

Yacht and ship brokers are not required to collect tax on sales made on behalf of their clients. Therefore, when a vessel dealer also acts in the capacity of a broker, a distinction has to be made between retail sales and brokerage sales. A brokerage sale is defined as a sale handled by a representative in which the representative does not by his/her own act bind the principal to the contract or vest title of the vessel to the buyer. The Department of Boating and Waterways, CAL-BOAT, licenses yacht and ship brokers and their salesmen. Lists of licensees are available through Department of Boating and Waterways. However, brokerage sales by unlicensed persons do occur.

Effective January 1, 1996, Section 6202 of the Revenue and Taxation Code was amended. It now provides that a person's liability for use tax is relieved when that person purchases a vessel through a broker if the purchaser has paid the amount of sales or use tax to the broker and obtains a receipt showing the payment of the tax. In this case, the broker is liable for that amount under Law Section 6204 as if the broker were a retailer engaged in business in this state, and the amount collected constitutes a debt owed by the broker to this state.

The term "Net Sale" (often used interchangeably with "Consignment Sale") usually includes a base price placed on a vessel by the owner and anything received above the base price represents the "commission" for the broker. A net sales transaction does not involve the offer-and-acceptance procedure common to most brokerage transactions, and the broker has the ability to transfer title. Although net sales transactions require licensing under the Yacht and Ship Brokers Act, they are not brokerage transactions under provisions of the California Revenue and Taxation Code. Brokers regularly making "net sales" are required to hold a permit and pay the sales tax due.

Over half of the boats sold at brokerage are on or sold with a trailer. By definition of the California Vehicle Code, persons who negotiate for the sale of boat trailers are considered a dealer. Generally, boat trailers are treated as vehicles under the California Vehicle Code.

However, brokers who sell trailers do not have dealer status in the Vehicle Code. Brokers should not be using a "Notice of Sale" form to handle brokered trailer transfers. The form is only used by licensed dealers for sales tax transactions.

Its important to note that brokers who are acting as vessel agents (Section 9858.5 CVC) may collect use tax for transmittal to DMV.

OUT OF STATE DELIVERY 0630.40

Sales tax does not apply to sales of vessels qualifying as interstate commerce sales described in Regulation 1620. Use tax does not apply to vessels purchased for use and used in interstate or foreign commerce prior to its entry into California, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(Cont.) 0630.40

Vessels delivered out-of-state (e.g., outside three-mile limit) that are brought back into California are regarded as having been purchased for use in California if their first functional use is in California. If a vessel is first functionally used outside California, the vessel is presumed to have been purchased for use in California if it is brought into California within 90 days after its purchase (exclusive of shipment or storage for shipment time), unless the property is used or stored outside California one-half or more of the time during the six-month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is considered of a temporary nature and is not proof of an intent that the property was purchased for use outside California

Auditors should verify that documentation is available to prove the vessel was delivered out-of-state (e.g., bill of lading, employee expense claims, signed statement by delivery person that includes date and location, etc.) and used out-of-state (mooring receipts, fuel receipts, repair receipts, etc.).

AIRCRAFT DEALERS 0635.00

GENERAL 0635.05

1. Aircraft Dealers

The only state agency which licenses an aircraft dealer to sell aircraft is the State Board of Equalization. Consumer Use Tax Section (CUTS) maintains a card file of all approved aircraft dealers. When the seller or buyer of an aircraft is an approved aircraft dealer, CUTS assumes sales tax reimbursement was collected or the purchase was for resale. The source document and a copy of the bill of sale, when available, is sent to the district audit section for their action, and no further action is taken by CUTS.

2. Seller With or Without Permit

When the seller does not hold a seller's permit, or the seller holds a permit and does not sell aircrafts in the regular course of business, the purchaser is assigned a Consumer Use Tax Section account number. The tax program "SP" prefixes all account numbers.

In most cases, the source document shows the buyer and seller as private parties or no former owner is shown. However, the buyer may have actually purchased the aircraft from an aircraft dealer. If the purchaser submits a purchase invoice showing the amount of sales tax reimbursement paid and the statement is verified, then the file is closed and the copy of the purchase invoice is forwarded to the dealer's district of control. When the statement shows a purchase from a seller who holds a permit but is not an aircraft dealer, or when the statement claims sales tax is paid to a person who does not hold a seller's permit, the purchaser remains liable for payment of the use tax until the account is settled.

DEFINITION 0635.10

An aircraft is defined as any contrivance designed for powered navigation in the air except a rocket or missile (Regulation 1593).

SOURCE DATA 0635.15

Each month, the Consumer Use Tax Section downloads the master file registration from the Federal Aviation Administration's Internet Website. This file is matched against the prior month and all changes to aircraft registered to a California address are captured. The Technology Services Division processes this information and adds it to CUTS source information file. Each change that occurred to an aircraft registered with a California address or transferred from an out-of-state address to a California address during the previous month will be further investigated. This information is also supplied to the appropriate County Assessor for property tax purposes.

APPLICATION OF TAX ON SALE AND PURCHASE OF AIRCRAFTS 0635.20

Every sale or purchase of an aircraft is subject to either the sales tax or the use tax, unless it is specifically exempt. Every sale of an aircraft is a sale at retail, and by definition, the seller is a retailer. An aircraft is mobile transportation equipment for leasing purposes.

(Cont.) 0635.20

Pursuant to Regulation 1593, tax does not apply to the sale of and storage, use or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing, to:

1. a person who operates the aircraft as a common carrier of persons or property, provided:
    (a) the person operates the aircraft under authority of the laws of this state, of the United States, or any foreign government, and
    (b) the person's use of the aircraft as a common carrier is authorized or permitted by the person's governmental authority to operate the aircraft;
2. a foreign government for the use of the aircraft by the government outside of California, or,
3. a nonresident of California who will not use the aircraft in this state other than to remove the aircraft from California.

Aircraft dealers making exempt sales of aircrafts must obtain an Aircraft or Aircraft Parts Exemption Certificate (as shown in Regulation 1593).

For sales to common carriers see Law Section 6366(b) and for leases of common carriers see Law Section 6366(c) for $50,000 or 20% presumption (on or after 01/01/97). Law Section 6366.1(c) regarding leases to common carriers with a $25,000 or 10% presumption is superseded by Section 6366(c) as of January 1, 1997.

AUDIT PROCEDURES 0635.25

During an audit of a California aircraft dealer or dealer/broker, the auditor shall schedule leads on certain apparently valid and properly supported exempt sales of aircraft as follows:

1. All exempt sales to nonresidents other than bona fide dealers.
2. Any exempt sales to common carriers or foreign governments which seem to be valid but which might have some questionable aspects.
3. All brokerage transactions.

The Form BOE-379-A, Aircraft Exempt Sale Referral, (Exhibit 10) has been developed for this purpose. The auditor shall perform sufficient verification to ensure that no transactions are listed which are properly the liability of the taxpayer under audit; i.e., list only transactions which audit verification indicates are the responsibility of the purchaser rather than the dealer.

It should be determined that the dealer has not in effect encouraged false documentation. If it can be established that the dealer knew the facts stated in the documentation were not true, the tax plus applicable interest and penalties should be assessed against the dealer. A dual determination against the purchaser might be justified in some situations.

All such listings of transactions should provide as much information as possible but should include as a minimum: The name and address of the purchaser and seller; the type of aircraft including make, model, serial number and tail number; the state in which the aircraft is registered; the selling price; the basis on which the transaction was claimed as exempt, e.g., nonresident, common carrier, foreign government or brokerage; and the place of delivery. A separate Form BOE-379-A should be prepared for each transaction. A photocopy of the exemption certificate and invoice, if available, should be attached to the BOE-379-A.

Transactions should also be listed during audits of other accounts involving exempt sales of aircraft where the purchaser would be responsible for tax such as:

1. Sales of aircraft by other in-state sellers (nondealers) to residents and nonresidents.
2. Sales of aircraft by out-of-state sellers (dealers and nondealers) to California residents and sales to nonresidents that may have some indications that the aircraft was purchased for use in California.

The Form BOE-379-A on such apparently exempt sales transactions should be forwarded directly to CUTS. CUTS will correlate this data with their own sources of information and prepare determinations where appropriate. Time expended in preparing leads on purchasers should be charged to Time Code 3108.

CO-OWNERS 0635.30

One peculiarity often encountered in aircraft ownership (which occurs less frequently in the ownership of vehicles or vessels) is that several persons often own a single aircraft.

In this event, the printout will list the buyer's name followed by "co-owner." Since the purchase of part ownership in an aircraft is taxable (the measure of tax being that amount paid for the partial interest), a letter will be prepared by CUTS notifying the buyer of the possible tax liability and also to obtain the name or names of the additional owners. Each additional owner will be notified of the possible tax liability.

When an aircraft has multiple owners, a determination will be issued for the full liability to each owner. However, if there is information as to the exact percentage owned by each partner, the determination will be issued to each partner for his or her prorated amount. Each person will have a separate account number.

When a co-tenancy is dissolved and a surviving owner makes a payment to a departing owner, including a payment made prior to the transfer for the benefit of a tenant not matched by such tenant, all contributions would be considered as taxable measure; i.e., the monthly loan payments made by only one of the tenants.

USE IN CALIFORNIA 0635.35

For purposes of the storage and use exclusion provided in Section 6009.1 of the Revenue and Taxation Code, no taxable "use" of property occurs in this state where the sole exercise of power or control over the property in this state consists of the transporting of the property under its own power to the out-of-state point for use thereafter solely outside California. An aircraft is used solely outside California if it does not return to California within six months after its exit and it is substantially used in revenue and company service during this six-month period. **This relates only to use tax**.

Whether or not the purchaser has made another use of the property while in California or while transporting the aircraft outside the state, such as transporting luggage or business property, is a factual matter which must be decided on a case-by-case basis.

Examples of Specific Applications:

1. Airplane parts brought to California and attached to planes which are being modified in California are exempt from use tax where the finished planes are flown directly out of the state for use thereafter outside the state. However, if any other use is made of the plane, such as transportation of persons or property on its flight outside the state, tax does apply.

2. An airplane which is part of a dealer/lessor's ex-tax inventory in this state is flown by the dealer/lessor to a point outside this state for delivery to the lessee for use thereafter solely outside the state. The lease commences at the out-of-state point. The transaction is exempt from use tax under Section 6009.1.

3. Airplane parts purchased from a California retailer and delivered to the purchaser or ~~their~~his/her agent in this state for attachment to planes being modified which are later flown directly out of the state for use thereafter outside the state are subject to tax. Law Section 6009.1 is not applicable since this is a sales tax transaction.

4. A lessor purchased an airplane for resale and leased the plane to an out-of-state lessee. The terms of the lease explicitly provide that the lease was to commence in California even though the property was to be delivered by the lessor to the lessee out-of-state at some later date. The storage and use exclusion provided in Law Section 6009.1 is not applicable since the lease commenced in this state. When mobile transportation equipment purchased for resale is leased, with the lease commencing in California, and with the use in California being limited to leasing, Law Section 6094(d) and Section 6244(d) specifically provide that use tax applies to fair rental value "whether the equipment is within or without the state," provided a timely election is made.

INDUSTRY TERMINOLOGY 0640.00

Certain terminology is used in the automobile industry. The terms defined below are the most common used. The list may be useful for the auditor to understand how the industry operates.

Accommodation Sales:

These are usually sales of personal cars of management personnel, sales persons or employees. It is immaterial that the car was displayed at the dealer's place of business. The dealer will be liable for sales tax if the dealer prepared a dealer's report of sale or the dealer executes a conditional sales contract on which the dealer's name appears as the seller.

Actual Cash Value (ACV):

The wholesale value assigned to a trade-in or purchase. The ACV will usually differ from trade-in allowance. ACV is determined by the dealer at the time of purchase or trade, based on valuation guides and adjusted for the specifics of each vehicle. ACV can be higher or lower than the trade-in allowance.

Auto Auction:

Auto auctions are generally of two types. Dealer auctions are open to licensed car dealers only. Public auctions are open to every one. Selling prices are set through competitive bidding on each vehicle rather than by the seller.

Book Value:

The wholesale value of a given used vehicle as determined by a recognized wholesale appraisal guide book.

Broker:

A middleman who locates cars for other dealers, usually on a commission basis. A broker does not take title or possession of the cars, whereas a wholesaler takes possession and title of the cars.

Buy Here / Pay Here:

A dealer that offers in-house financing for the cars sold.

Car Jacket (Deal Jacket):

The complete history of a vehicle from the time it is purchased to its sale. The jacket usually contains the purchase and sales documents, any invoices associated with repairs, delivery and parts, an odometer statement, and vehicle identification number, stock number and –records of sale the transaction. The jacket is normally a folder containing all the information.

Charge Back:

A loan financed through the dealer is paid off sooner than the loan term. The finance company will make the dealer pay back part of the commission. This also happens with insurance commissions.

Consignment:

An arrangement under which a dealer agrees to accept possession of a vehicle from the owner for the purpose of selling the vehicle and pay the owner from the proceeds of the sale. It does not include the wholesale transaction at a licensed auto auction.

(Cont.) 0640.00

Courtesy Deliveries:

Factory Directed- This is a transaction in which an out-of-state dealer sells a vehicle to a customer but directs the manufacturer to make delivery to the customer at a specified location in California.

Not Factory Directed- This involves a delivery from the dealer's inventory to a customer of an out-of-state dealer based on direct correspondence between the respective dealers, and without participation by the manufacturer.

Curbing:

Sale of a vehicle by an unlicensed dealer from a shopping center parking lot or similar area.

Customer File:

See Car Jacket.

Deal:

The completed sale of a car or truck to an individual or another dealer.

Dealer Financing:

A dealer financing his or her own sales by servicing the note in-house or by selling the note to a third party at a discounted amount.

Dealsheet:

The sales order or invoice showing the sale of a vehicle to an individual or another dealer.

Demand Title

When a purchaser demands title for a vehicle which has been purchased free of any liens or encumbrances, the dealer is required to complete a used vehicle report of sale in the usual manner.

Demos:

Normally, these are vehicles which are used by dealership personnel for personal use along with demonstration or display in the regular course of business.

Detailing:

To prepare a car for resale. This usually includes cleaning, minor repairs and cosmetic work.

Discount:

The difference between the asking or list price and the final sales price of a vehicle.

Dismantler:

One who is engaged in the business of buying or selling, or otherwise dealing in vehicles for the purpose of dismantling, who buys or sells the parts and materials thereof, or deals in used motor vehicle parts.

Doc Fee:

A fee charged for processing or handling the documentation of a sales transaction.

Domebook:

A journal used by small businesses to help organize income and expenses on a monthly basis.

Double Dip:

Person with a loan for the purchase of a car and with additional outside financing for down payment that may not be shown as a lien on the title.

Factory Dealer-Incentive:

The manufacturer sells the vehicle to the dealer at a discounted price to promote the sale of the vehicle.

Factory Invoice:

A receipt from the manufacturer identifying the cost of the vehicle, dealer's name and address and listing of the vehicle's identification number and make.

Flooring:

Costs incurred in obtaining inventory, usually through loans from banks or other financial institutions. Includes interest on the loans.

Grey Market Cars:

Cars imported through sources other than factory authorized distributors.

Grossing Up The Deal:

Recording an underallowance as a credit to cost of new vehicle.

Guidebook:

A book used to value trade-ins and cars in inventory. It is also used for sale purposes. The most common guidebook used in the industry is the Kelley Blue Book.

In-House Financing:

Financing provided by the dealer.

Internal Sales:

This is a means for the selling department to apportion its cost of doing business to another department within the dealership.

Legal Owner / Lienholder:

A person holding a security interest in a vehicle.

Lemon Law:

Civil Code sections 1793.2, 1793.22, 1793.23, 1793.24, 1793.25 and 1794 are commonly known as the Lemon Law. The Lemon Law provides an arbitration process for resolving disputes between manufactures and consumers of new motor vehicles purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law either to replace the motor vehicle or reimburse the consumer for the purchase price.

(Cont.) 0640.00

License Fees:

The Vehicle License Fee Law imposes a license fee for the privilege of operating in this state any vehicle of a type subject to registration under the Vehicle Code.

List Price:

The original suggested retail price (including destination charges).

Manufacturer's Rebate:

A manufacturer's rebate is an allowance made by the manufacturer directly to a consumer as an incentive to purchase the manufacturer's vehicle from a dealer.

Manufacturer Suggested Retail Price (MSRP):

See List Price.

Motor Vehicle Security Agreement:

Basic document of sale.

Overallowance:

An allowance given on a trade-in in excess of its actual cash value. This is used as a means to close the deal. Usually, the difference is made up by decreasing the discount on the car sold.

Package Deal:

The purchase of two or more vehicles for a lumpsum price. This generally occurs between dealers and is one way to sell a car that otherwise would be difficult to move.

Pink Slip:

Certificate of title for ownership of vehicle. From 1989, the new certificate of title is multicolored (green, yellow, and pink) and is 8" x 7."

Rate Spread:

This occurs when a dealership has made arrangements to write car loans for a financial institution. The dealership will pre-arrange the amount of interest rate that the financial institution will charge on car loans to buyers. The dealership will then write loans at a higher rate and receive the excess interest as income payment from the financial institution.

Reconditioning:

Any work done to prepare a vehicle for sale.

Repo:

Repossession of a vehicle when the purchaser defaults on the loan.

Report of Sale:

New- A new vehicle report of sale is used for reporting the sale of a new vehicle which the dealership is franchised to sell.

Used- A used vehicle report of sale is used for reporting the retail sale of used vehicle.

Wholesale- A wholesale report of sale is used to report sales of used vehicles from dealer to dealer.

Roll back:

A vehicle purchased and operated on a Report of Sale and returned to the dealer for some reason (credit unavailable, customer changed mind, etc.) prior to completion of the transaction and issuance of the title.

Skip:

Renege on payment of a loan. The term also applies to a buyer who cannot be located.

Stock Book:

This journal typically lists each vehicle delivered to the dealership in chronological order. Depending on the person maintaining this book, it could be a more complete listing of customer name, date vehicle received and sold, VIN#, etc.

Sublet:

Work performed by outside vendors, usually when the dealer is not equipped for the work, or is unable to perform the work within a reasonable time.

Trade-Down:

A retail customer trades a car for one of lesser value.

Trade-in:

An item taken in by a dealer as part of a deal on the sale of a vehicle from dealer's inventory. Trade-ins are usually vehicles, but may be a boat, motorcycle, camping trailer or other items agreed on by the dealer and customer.

Underallowance:

Recorded trade-in allowance that is below market value and which is not attributed to less than fair condition of the trade-in.

Up Front Costs:

Also known as "drive away" charges, includes capitalized cost reductions (additional charges to use and possess the property), document preparation charges, bank fees, assumption fees, deferral fees, and excessive wear and use charges (e.g., excessive mileage fees). Generally, dealers collect these "up front" charges from a lessee at inception of a lease (including the first months rental charge).

(Cont.) 0640.00

Unwind:

The same as a canceled sale. When a vehicle is documented but the customer does not take possession and cancels the sale. This amounts to reversing the sale.

Used Car Log:

A record of all purchases and sales of used cars, usually showing the year, make, identification number, date purchased, date sold, the source of dealer's purchase and the dealer's customer.

Vehicle Identification Number:

The unique identification number assigned to a vehicle by the manufacturer.

Warranty:

Protection plan or guarantee on the car and/or certain systems such as the drive train.

Wholesaler:

Specializes in selling vehicles to other dealers for an agreed price. Unlike a broker, the wholesaler takes possession and title of the vehicle. They do not sell to the general public.

Table of Exhibits

STATEMENT OF DELIVERY OUTSIDE CALIFORNIA — BOE–448 **EXHIBIT 1**

BOE–448 REV. 1 (1–99) STATE OF CALIFORNIA

STATEMENT OF DELIVERY OUTSIDE CALIFORNIA BOARD OF EQUALIZATION

Please submit with and, when applicable, a completed form BOE–447 and a copy of the contract

NOTICE TO SELLER AND PURCHASER

Since this transaction may be subject to audit verification as authorized under the Sales and Use Tax Law Section 7054, both the seller and purchaser are urged to retain additional documentation such as receipts for meals, lodging, fuel, and transportation. All records required to be retained must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

*Seller — please retain the **original** for your records, and send a **copy** of this statement to:*

BOARD OF EQUALIZATION
Consumer Use Tax Section, MIC:37
P.O. Box 942879
Sacramento, CA 94279–0037

Please type or print

NOTE: *When a vehicle is delivered to the purchaser outside California, the seller (or person making the delivery on behalf of the seller) and the purchaser would both be at the out-of-state delivery point at the same time, that is, at the time of delivery. In order to established that such is the case, and that the delivery did not occur in California, both persons are urged to appear at the same time before a notary at the out-of-state delivery location to sign this statement and have it notarized.* ***The seller must retain the original of this statement to support any claimed exemption from California Sales and Use Tax.***

I hereby certify, under penalty of perjury under the laws of the State of California that the below described vehicle was delivered outside California on the date and at the place stated below.

YEAR	MAKE	MODEL	VIN/LIC#
OUT-OF-STATE ADDRESS (Street, City, Zip Code)			DATE OF DELIVERY
NAME OF SELLING DEALER			PHONE NUMBER
STREET ADDRESS	CITY	STATE	ZIP CODE

I have delivered the above described vehicle to the purchaser named below.

NAME *(Please Print)* CHECK (✓) ONE

☐ SALESMAN ☐ EMPLOYEE ☐ PARTNER ☐ AGENT ☐ OTHER (explain below)

SIGNATURE	DATE

The vehicle described above was delivered to me by the above-named person. I understand that if this vehicle is brought to California within 90 days of its delivery to me regardless of the purpose or duration, it shall be presumed that I have purchased the vehicle for use in California and if it determined that use tax is due, I will pay it directly to the State Board of Equalization.

PURCHASER'S NAME *(Please Print)*	DRIVER'S LICENSE NO.	STATE

PURCHASER'S SIGNATURE	PURCHASER'S ADDRESS	DATE

NOTARY STATEMENT

On this _____ (DATE) day of _____ (MONTH), _____ (YEAR), before me, _____ (NOTARY NAME), a Notary Public in and for the County of _____ (COUNTY), State of _____ (STATE), duly commissioned and sworn, together, personally appeared both _____ (SELLER OR AGENT) and _____ (PURCHASER), known to me to be the persons whose names are subscribed to the within instruments, and acknowledged that they executed the same.

NOTARY SEAL

Fraudulent use of this statement to avoid the payment of California Sales and Use Tax can result in severe penalties.

Date Published

STATEMENT PURSUANT TO SECTION 6247 — BOE–447 **EXHIBIT 2**

BOE–447 REV. 1 (1–99)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

STATEMENT PURSUANT TO SECTION 6247 OF THE CALIFORNIA SALES AND USE TAX LAW

Please submit with and, when applicable, a completed form BOE–448 and a copy of the contract

NOTICE TO SELLER AND PURCHASER

The taking in good faith of a full and complete statement by the retailer (seller) will relieve the retailer of any liability for collecting of Use Tax from the purchaser. The retailer must retain the original statement. If the retailer, in good faith, does not collect the Use Tax from the purchaser and the purchaser purchases the vehicle for use in California, then the purchaser must pay the applicable Use Tax directly to the Board of Equalization.

*Seller — please retain the **original** for your records, and send a copy of this statement to:*

BOARD OF EQUALIZATION
Consumer Use Tax Section, MIC:37
P.O. Box 942879
Sacramento, CA 94279–0037

This form to be completed by purchaser or agent of purchaser

Please type or print

I have an address or I am stationed in the military within the State of California.

California Address:

STREET	CITY	STATE	ZIP CODE

I am purchasing a vehicle described as:

YEAR	MAKE	MODEL
VIN/LIC#	**PURCHASE PRICE**	**DATE OF PURCHASE**

Name and address of California Dealer:

NAME	SELLER'S PERMIT NUMBER	PHONE NUMBER	
STREET ADDRESS	**CITY**	**STATE**	**ZIP CODE**

This vehicle will be delivered to me at the following out-of-state address:

STREET ADDRESS	CITY	STATE	ZIP CODE

I certify that the above described vehicle is being purchased for use outside California and will be used at the following out-of-state address:

STREET ADDRESS	CITY	STATE	ZIP CODE

I understand that if this vehicle is brought into California within 90 days of its delivery to me, regardless of the purpose or duration, it shall be presumed that I have purchased the vehicle for use in California and if it is determined that California Use Tax is due, I will pay it directly to the State Board of Equalization

NAME OF PURCHASER *(please print)*	SIGNATURE	DATE
DRIVER'S LICENSE NUMBER		**STATE**
NAME OF AGENT (please print)	**SIGNATURE**	**DATE**

Fraudulent use of this statement to avoid payment of California Sales and Use Tax can result in severe penalties.

Date Published

CLEAN DEAL QUESTIONNAIRE — BOE–543 FRONT **EXHIBIT 3**

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

The Board of Equalization is currently verifying retailer Sales and Use Tax returns. As part of this verification, we need to confirm sales information for a motor vehicle you purchased.

On the back of this letter is a description of that vehicle and a questionnaire. Could you please assist us by completing the questionnaire as accurately as possible?

Once you have completed the questionnaire, we would appreciate it if you would return it as promptly as possible in the enclosed envelope.

Thank you for your cooperation,

Sincerely,

Enclosure

CLEAN DEAL QUESTIONNAIRE — BOE–543 BACK **EXHIBIT 4**

BOE–543 (BACK) REV. 13 (7–95)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

REQUEST FOR CONFIRMATION OF DATA

MAKE	MODEL	YEAR

VIN NUMBER	LICENSE NUMBER

I purchased the above motor vehicle from (see Note 1 below): ☐ A DEALER ☐ A PRIVATE PARTY

NAME

STREET ADDRESS

CITY, STATE, ZIP CODE

I dealt with *(name of person whom purchase was negotiated):*

Approximate date of purchase:

Vehicle Sales Contract Information:

A.	1.	Vehicle Cash Price	$ _____	
	2.	Accessories	$ _____	
B.		Document Preparation Fee	$ _____	
C.		Smog Fee	$ _____	
D.		Sales Tax	$ _____	
E.		Other	_____ $	
F.		Total Cash Price (A to E)		$ _____
G.		Trade In Allowance	$ _____	
H.		Amount Financed		$ _____

Description of trade-in (if any) *(see Note 2 below)**:***

MAKE	MODEL	YEAR

VIN NUMBER	LICENSE NUMBER

Additional information (*attach additional sheets as necessary*): _____

_____

_____

_____

_____

_____

_____

Note 1*: If the seller was a private party, please state how you became aware that the vehicle was for sale and whether a dealer assisted in any way in the sale arrangements.*
Note 2*: If you sold or transferred your equity in the motor vehicle you formerly owned to any other than a dealer named above, please explain fully.*

SIGNATURE	DATE

Date Published

	Records	Purpose	Scope of Examination
Initial Examination	Sales Tax Work Papers	Method of Reporting and Consistency	Audit Period
	General Ledger	Account Procedures Unusual Postings	Audit Period
	Financial Statements	Comparison with STWP to Establish Base of Audited Amounts	Audit Period
	Sales Tax Accrual Account	Indications of Consistent Overaccruals or Substantial Amount in Specific Periods	Initial Reconciliation at Inception of Audit. Adjust Findings as differences are explained or upon findings that Accruals were not made.
Total Sales	Sales Journals & General Journal	Examination of Content Credit Postings to Other than Sales Accounts	Audit Period
	Customer Folders	Agreement of Documents Contents with Folders	Variable
	Car Invoices (Posting Copies)	Agreement with Records	Variable
	New Car Purchase Journal	Dealer Transfers and Courtesy Deliveries	Audit Period
	Cash Receipts Journal	Additional Sales	Audit Period
	DMV Reports of Sale	Additional Sales	Variable
	Fixed Asset Accounts	Sales of Fixed Assets	Audit Period
Self Consumed & Use Tax	Company Car — Demonstrator Account	Indication of Demonstrators, Company Cars	Audit Period
	Fixed Asset Accounts	Self Consumption	Audit Period
	Internal Journal	Self Consumption on Company Cars	Variable
	Purchase Invoices	Self Consumed and Use Tax Purchases	Variable
Sale for Resale	New Car Sales Journals & DMV Books	Sales to Leasing Companies and Registration Date	Audit Period
	Use Car Journal	Valid Resales	Audit Period
	Counter Invoices & Parts & Accessory Journal	Validity of Resales & Composition of Postings	Variable
U.S. Gov't & Interstates	STWP — Customer Folders	Composition of Deduction & Supporting Documents	Audit Periods
	Car Journals		
Motor Vehicle Fuel	Sales Journals	Validity of Deduction	Variable
Labor Sales	Service Journal	Composition	Variable
	Repair Orders	Validity of Claimed Labor	Variable
	Purchase Invoices	Composition of Sublet	Variable
	Insurance Estimates	Differences between Repair Orders and Estimates	
Bad Debts — — Repossession	Sales Tax Work Papers — Repo Loss Schedule	Accuracy of Deduction	Variable
	Cash Receipts or Collection Agency Statements	Recoveries on Bad Debts	Variable
Common Carrier Deduction	Exemption Certificates	Validity of Deduction	Audit Period

AFFIDAVIT FOR SECTION 6388 OR 6388.5 EXEMPTION **EXHIBIT 6**

BOE–837 REV. 1 (12–96)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

AFFIDAVIT FOR SECTION 6388 OR 6388.5 EXEMPTION FROM THE CALIFORNIA SALES AND USE TAX

The law provides an exemption for the sale and use of certain vehicles under sections 6388 and 6388.5. Each section is described below.

SECTION 6388 — NEW OR REMANUFACTURED VEHICLES PURCHASED FROM OUT-OF-STATE DEALER

Applies to the purchase of a new or remanufactured truck, truck tractor, trailer, or semitrailer, with an unladen weight of 6,000 pounds or more, or a trailer coach or auxiliary dolly, from a dealer located **outside** California for use **outside** California, and delivered by the manufacturer or remanufacturer to the purchaser in California. The purchaser must

- drive or move the vehicle outside California within 30 days after delivery,
- furnish written evidence of out-of-state registration for the vehicle, and
- not be a resident of California, and must furnish the manufacturer or remanufacturer with an affidavit that the vehicle has been moved or driven to a point outside this state within 30 days of the date of delivery to the purchaser.

SECTION 6388.5 — NEW OR REMANUFACTURED TRAILERS PURCHASED FOR OUT-OF-STATE OR INTERSTATE COMMERCE USE

Applies to the purchase of a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more, which has been manufactured or remanufactured either inside or outside this state; from a dealer either inside or outside California; for use exclusively outside California or exclusively in interstate or foreign commerce or both; and delivered by the manufacturer, remanufacturer, or dealer, to the purchaser in California. The purchaser must

- drive or move the vehicle outside California within 30 days if the vehicle was manufactured or remanufactured outside California, or 75 days if manufactured or remanufactured in California, and
- furnish evidence that the vehicle is registered and licensed outside California (may have apportioned registration with California base plate if exemption is based on the vehicle being used exclusively in interstate or foreign commerce).

CHECK AND/OR FILL-IN ALL APPROPRIATE BOXES AND BLANKS BELOW

I have purchased a vehicle the sale and use of which is exempt from California sales and use tax under section ☐ 6388 ☐ 6388.5. The transaction meets all of the requirements for the applicable section listed above. The vehicle is a ☐ truck, ☐ truck tractor, ☐ trailer, ☐ semitrailer, ☐ trailer coach, or ☐ auxiliary dolly, described as:

VEHICLE MAKE & MODEL	VIN/SERIAL NO.	YEAR	UNLADEN WEIGHT

MANUFACTURER/REMANUFACTURER	PLACE OF MANUFACTURE/REMANUFACTURE	DATE OF DELIVERY

I hereby certify that the vehicle listed above, which was purchased from and/or delivered by _____ (Name of California Dealer, Mfr./Remfr.) located at _____ (California Dealer or Mfr./Remfr.'s Address — Street, City, State, Zip Code), has been licensed and/or registered in _____ (State Where Registered). The vehicle was moved outside California within ☐ 30 ☐ 75 days (check one).

The purchaser is a ☐ corporation, ☐ partnership, ☐ sole proprietor, which ☐ is ☐ is not a resident of California. **A copy of the out-of-state registration, or license and registration, is attached**. The vehicle was purchased for use outside California (section 6388) or for use exclusively outside California or exclusively in interstate and foreign commerce, or both (section 6388.5).

I understand that if the above requirements concerning moving or using the vehicle outside California are not met, I am required by the California Sales and Use Tax Law to report and pay tax directly to the California State Board of Equalization, the tax to be measured by the purchase price of the above listed vehicle even though I have furnished an affidavit of exemption to the manufacturer, remanufacturer, or dealer.

SIGNATURE	TITLE	

PRINT NAME	PHONE NUMBER	DATE
	( )	

DECLARATION OF EXEMPTION FROM DISTRICT TAX — COMMERCIAL VEHICLES EXHIBIT 7

I HEREBY CERTIFY THAT:

1) The _____
(Description of commercial vehicle, with name of manufacturer and type)
purchased from _____ will be registered to the following address:
(Name of seller)

_____

_____

2) The vehicle will be operated from the following address:

_____

_____

3) The address from which the vehicle will be operated is outside the _____ District.
(Name of District)

4) When not in use, the vehicle will be kept or garaged at:

_____

_____

5) The vehicle will be stored, used or otherwise consumed principally outside the _____ District.
(Name of District)

6) ☐ (a) The purchaser does not hold a California seller's permit.

☐ (b) The purchaser holds California seller's permit # _____
Check applicable box

I understand that this declaration is for the purpose of allowing the above named seller to treat the sale of the above described tangible personal property as exempt from the transactions (sales) tax imposed by the _____ District. If the property is principally stored, used or otherwise consumed in that district, the purchaser shall be liable for and pay the use tax.
(Name of District)

The foregoing declaration is made under penalty of perjury.

PURCHASER _____

TITLE _____

AUTHORIZED AGENT _____

DATE _____

DECLARATION OF EXEMPTION FROM DISTRICT TAX —
NONCOMMERCIAL VEHICLES, AIRCRAFT AND UNDOCUMENTED VESSELS **EXHIBIT 8**

I HEREBY CERTIFY THAT:

1) The _____
(Description of vehicle, with name of manufacturer and type)

purchased from _____ will be registered to the
(Name of seller)
following address:

_____

_____

2) The above address is outside the _____ District.
(Name of District)

3) The above address is my principal place of residence (or, in the case of a corporation, principal place of business).

4) The vehicle, aircraft or undocumented vessel when not in use will be kept garaged, hangared or docked at:

_____

_____

5) The vehicle, aircraft or undocumented vessel will be stored, used or otherwise consumed principally outside the _____ District.
(Name of District)

6) ☐ (a) The purchaser does not hold a California seller's permit.

☐ (b) The purchaser holds California seller's permit # _____
(Check applicable box.)

I understand that this declaration is for the purpose of allowing the above named seller to treat the sale of the above described tangible personal property as exempt from the transactions (sales) tax imposed by the _____ District. If
(Name of District)
the property is principally stored, used or otherwise consumed in that district, the purchaser shall be liable for and pay the use tax.

The foregoing declaration is made under penalty of perjury.

PURCHASER _____

TITLE _____

AUTHORIZED AGENT _____

DATE _____

WATERCRAFT EXEMPTION CERTIFICATE

I HEREBY CERTIFY: That the watercraft identified below is used

( ) In the transportation by water of persons or property for hire in interstate or foreign commerce*;

( ) In commercial deep sea fishing operations and the watercraft is used outside the territorial waters of this state;

( ) In transporting for hire persons or property to vessels or offshore drilling platforms located outside the territorial waters of this state;

That all tangible personal property which I shall purchase from _____

_____

described on purchase orders, or invoices, as tax exempt under Section 6368 of the Sales and Use Tax Law and Regulation 1594 consists of watercraft or tangible personal property becoming a component part of watercraft in the course of constructing, repairing, cleaning, altering, or improving the same, which watercraft will be used principally in the operation checked above.

***Note:** Revenue and Taxation Code section 6368(b) creates a rebuttable presumption that you are not regularly engaged in commercial deep-sea fishing if your gross receipts from such operations are less than twenty thousand dollars ($20,000) a year. Revenue and Taxation Code section 6368(c) creates a rebuttable presumption that the watercraft is not regularly used in interstate or foreign commerce if your yearly gross receipts from such operations do not exceed 10 percent of the cost of the watercraft or twenty-five thousand dollars ($25,000), whichever is less.*

Date Certificate Given _____

Purchaser _____
(COMPANY NAME)

Address _____

Signed By _____
(SIGNATURE OF AUTHORIZED PERSON)

_____
(PRINT OR TYPE NAME)

Title _____
(OWNER, PARTNER, PURCHASING AGENT, ETC.)

Seller's Permit No. (If any) _____
and/or
Fish and Game License No. _____

Names of Watercraft for which certifying purchaser will be making purchases:

_____

_____

_____

AIRCRAFT EXEMPT SALE REFERRAL — BOE–379–A **EXHIBIT 10**

Account Number SP

Area Code 999

FOR HEADQUARTERS USE ONLY

BT–379–A REV. 3 (1-86) STATE BOARD OF EQUALIZATION

AIRCRAFT EXEMPT SALE REFERRAL

To: Occasional Sales Unit

From: _____ District

☐ Copies of invoice and/or supporting documents attached

Purchaser: _____
FIRST MIDDLE LAST

Address: _____
STREET NUMBER

_____
CITY ZIP CODE COUNTY

Aircraft Identification: Make: _____ Reg.No: N _____ Year: _____

Place of Delivery _____

Seller: _____ Sales Price: _____

Address: _____ N Number of Trade-in _____

City: _____ Date of Sale _____

Sale claimed exempt by seller as a:

☐ Sale to nonresident of California; or,

☐ Sale to a common carrier or foreign government

☐ Exemption Certificate (attach copy)

☐ Purchase Order (attach copy)

Miscellaneous Information: _____

_____

_____

Prepared by: _____

Date: _____

FOR HEADQUARTERS USE

Due Date: _____